

Town of Enfield

Zoning Board of Adjustment Meeting Minutes

February 13, 2018



APPROVED April 10, 2018

Present: Mike Diehn - Chairman, Kurt Gotthardt; Ed McLaughlin, Tom Blodgett, Celie Aufiero, Scott Osgood-Town Planner/Zoning Administrator and temporary minute taker

Regrets:

Guests: Roger Rodewald, Riverside Ecological Design, LLC; Rob Malz

I. CALL TO ORDER - 7:05 pm.

Zoning Administrator Scott Osgood read the Public Notice. Noted the Notice was posted in the newspaper and required locations.

II. CITIZENS FORUM – None requested

III. PUBLIC HEARINGS

Roger Rodewald of Riverside Ecological Designs, LLC, on behalf of Charles and Janet Morgan will request a Variance in accordance with Section 505 of the Enfield Zoning Ordinance from Section 401.1 L to re-construct two housing units within the setbacks on Parcel 32-010 at 14 Pine Drive in the R1 District.

Roger presented the request. He noted the applicants live on Etna Road in Hanover. They did research on the lot before purchasing it. Roger went on to describe the lot, and included a plan from 1933 which showed the original layout of many small lots, possibly a tent campsite. He noted seven (7) lots were merged to form Lot 10, the lot in question. He said the initial survey did not pick up the fact that the two cottages were built partly over the lot lines. He noted the buildings need to be replaced. He notes they could be remodeled as well. He stated that for any work to be done, the buildings need to be located fully on the proper lot. He noted the existing building is about 700 sf, with the new design a bit larger, about 744 sf. The new ones are shown to be two story structures, whereas the existing buildings are one story, providing about 1400 sf, and both with three bedrooms each. He stated there will be no infringements on viewing rights.

Roger read the responses to the questions of the five criteria necessary to be established for the variance to be requested.

Celie asked if these building were currently on the town sewer. Answer was yes.

Tom asked how one would confirm the buildings would be in the same spot when rebuilt.

A question was asked about the sheds which are off the property, on the northern part of the lot. Roger said these would go away. Noted the sheds are not on Mr. Morgan's property.

Kurt noted the size of the Lot is 0.24 acres and that the current zoning requirements for a lot with water and sewer are 0.50 acres.

The hearing was opened to the Public.

Rob Malz, an abutter, asked to speak. Rob noted he hopes the owners get to build and to enjoy their property. He noted two concerns. When the cabin on the south east part boundary was built in 1948, part of it was constructed partially on property he now owns. He noted it is on his property by about two (2) feet. He stated this is common knowledge and is acknowledged by all concerned. He noted the setback requested in this Variance application is only two feet off the property line. Rob further noted that the owner, the Morgan's, asked for a four (4) easements to allow them to maintain the exterior parts of the building that is on the adjoining lot. Rob asked if a six (6) foot setback could be agreed to. With that, Rob would also ask that the existing easement on his property be extinguished.

Chairman Diehn asked that this be discussed after the public hearing.

Rob further noted he has been subject to legal action from the owner on issues of maintenance, repairs and improvements to the adjoining property. Rob further questioned the size of the proposed buildings, noted the new plan shows them to be bigger than the original.

Roger noted that the Morgan's may be planning on having a second rental unit on the property so as to improve security for the lot and to generate income of the site. Rob asked how big the house was going to be. Answer from the board that it could not exceed 35 feet in height, and must meet the size of the existing footprint.

Chairman Diehn noted that this board has no authority as to how big the house is, only as to its location, and maintaining the original grandfathered footprint.

Chairman Diehn noted he felt the request should not be approved. He does not want to see a two story house on the lot and that the lot looks to not be able to accommodate two houses on it. He further noted that, regardless of the degree of change to the footprint, he is not in favor of strict interpretation of the ordinance.

Board Member Ed McLaughlin noted that this board has no control over the height of the house.

Chairman Diehn stated this is not always the case, He noted he did some research on this issue. He stated that case law has restricted situations like this.

Discussion continued between Ed, Mike and Kurt. Mike noted that this request violates four sections of the Zoning Ordinance. ; Section 401.1 K, Lot size is required to be 0.5 acres, lot size is 0.24 acres. Section L. setback is required to be 20 feet from the road, north building is 10 feet from the road, and 15 feet from the property line, both buildings are within 20 ft, and on or over the plot line, Section N requires two parking spaces for each building, there are only two spaces for both buildings, The road frontage on Pine Street is as required at 75ft. but the zoning requires 100 ft at the front of the building. Sections 401.1U, one principal dwelling per lot.

Rob Malz discussed his second concern. He would like to see the building four feet off his property line. He also has concern that water running off the buildings could affect this lot. He asked the applicant's agent what would remediate this in the construction. Roger noted that a 2 ft wide by 4 ft deep gravel filled trench would be around the new structures.

Rob noted further concerns about how these lots, which were originally small sites, are now being converted to full time housing lots. Parking spaces will be very constricted. He noted that the Morgan's often drive on his grass areas. Rob further noted that he was sued by the Morgan's for blocking access on Bridge St. He said it was settled by him paying for the removal of ledge interfering with the Bridge St entrance to the Morgan Lot. He noted the new, current surface is crushed stone. He said he is concerned that they may convert the parking area to impervious pavement.

Board member Celie Aufiero noted concern that the neighborhood will become crowded, and that this request is too much. She noted she thinks this building is a camp and that both are currently very rough.

Mike noted that savings clauses may come into effect. *(These are contract clauses that keep their authority when the original documents are voided, such as the effect of grandfathering taking affect when Zoning Ordinances requirement contradict former practices)* Kurt noted that the Lot of Record is Grandfathered. Must contain the same footprint.

A question was raised as to if Enfield has a distinction between seasonal and year round structures. Zoning Administrator Scott stated the distinction would come up in the assessments of the property. *(Later discussion with the Code Enforcement Officer is whether the lot has a State Approved septic system.)*

Board Member Ed McLaughlin asked the applicant's agent what the options would be for the property owner. One consideration would be to demolish the two existing buildings and build one conforming house, possibly with an accessory apartment not more than 800 sf in size. Another hypothetical choice would be rebuilding exactly on the existing footing.

Chair Diehn noted this could be challenged. He noted there is a myth to grandfathering in that not all situations are allowed to be continued. He further stated it would need to be shown that it is not a new use.

Ceily read the grandfathering clause form the Zoning Regulations.

Rob Malz added that a request to replace a dock on the lake had problem being reestablished, even though grandfathered.

Roger stated it would be built within the original footprint.

8:02 The Public Hearing was closed.

Chair Diehn moved to deny the request due to the fact that application does not show the new building being built on the existing footprint.

Denied because the change would invalidate zoning by changing the size and location of the new footprint thereby exposing the plan to meet the full scope of the requirements of sections 401.1K, N, P, U ~~and Section 401.3~~

Seconded by Tom Blodgett

Discussion was held on the Zoning Sections noted. 401.1U Limit is one dwelling or principal building on the lot, K Does not meet minimum lot size of 0.5 acres; N, requires two parking spaces per dwelling; L, setbacks are not met; P Road Frontage s not met.

Ed further stated the plan is to build two new buildings.

Kurt read his list of Finding of Facts

1. Frontage on Pine St is 83 ft
2. Lot is 0.24 acres
3. Two buildings exist on an R1 Lot
4. Current houses are over the property lines
5. Two new three bedroom houses are planned for the lot
6. Existing Houses are on Town Sewer (and water)
7. Existing Lot is a pre existing non conforming under Section 413, Non-conforming Lots and Uses
8. There are no plans for more than two parking spaces
9. Planned houses would have a footprint of 744 sf, and not in the same footprint location.

A straw poll was conducted by the Chair to discern if the board wishes to continue the hearing or adjourn to a future date. By consensus the board decided to continue.

Chair Diehn directed the Board to go through the Five Criteria for a variance

- 1) The variance will not be contrary to the public interest.
The application asks for a continuation on a substandard lot which is violates the public interest.
- 2) The spirit of the ordinance is observed.
It violates the spirit by overcrowding of the lot
- 3) Substantial justice is done.
Not agreed to by the board.
- 4) The values of surrounding properties are not diminished.
The Values of the surrounding lots would be diminished.
- 5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
Not agreed to.

Board voted 5-0 to deny the request in that not all the criteria for a variance were met.

I. APPROVAL OF MINUTES

Review and approve minutes of December 12, 2017
Minutes approved 5-0 as amended.

II. COMMUNICATION AND MISCELLANEOUS

1. Supreme Court Order re Foley
Brief discussion was held regarding the salient point of the hearing. Ex parte communication needs to be avoided while a case is still in progress, and incremental encroachment is a valid reason to deny variance requests.
2. Continue discussion on options for recording meeting minutes
Recording not discussed. Did discuss avenues for reaching out for a recording secretary.
Will ask the Town Manager for help in finding a recording secretary. A recommendation was made as to looking into hiring a Town Employee to fill the role of minute taker.

3. Potential new ZBA member – One potential candidate was discussed. The Board voted on approving him as an alternate. Vote was 4 approved, one abstained. An invitation to be an Alternate on the board will be extended to attend the next meeting.

III. NEW BUSINESS

Discussed mail options as provided in the recent legislation. Board decided to stay with Certified mail instead of classified mail in that the classified mail does not confirm that mail was received.

IV. NEXT MEETING

Regular Zoning Board of Adjustment Meeting – To be determined

V. ADJOURNMENT at 9:12