

**Enfield Zoning Board of Adjustment – Meeting Minutes**  
**DEPT OF PUBLIC WORKS/TEAMS PLATFORM**  
**October 10, 2023**

**ZONING BOARD OF ADJUSTMENT MEMBERS PRESENT:** Mike Diehn (Chair), Susan Brown, Madeleine Johnson (Vice Chair), Cecilia Aufiero, Tim Lenihan

**ZONING BOARD OF ADJUSTMENT MEMBERS ABSENT:**

**STAFF PRESENT:** Rob Taylor- Land Use and Community Development Administrator, Whitney Banker-Recording Secretary

**GUESTS:** Nick Burke (C. Nicholas Burke Law Office, 3 Campbell St, Lebanon NH), Dana Arey (12 Donahue Dr, Enfield NH), Sandra Sharp (7 Water Lily Ln, Enfield NH), Charles Perkins and Linda Burroughs (9 Water Lily Ln, Enfield NH)

**I. CALL MEETING TO ORDER:**

Chair Diehn called the meeting to order at 7:01 p.m. and provided a brief overview of the case hearing process for community members unfamiliar with the Zoning Board.

Chair Diehn introduced members of the board.

**II. PUBLIC HEARINGS:**

**A. Continued- Land Use Case # Z23-09-02, Gordon Bagley Jr. is seeking variance relief from the Enfield Zoning Ordinance, Article IV, section 401.1, paragraph M to construct a deck within the prescribed setback to Mascoma Lake. The subject parcel is 0.2 acres and is located at 43 Meadow Lane (Tax Map 21, Lot 34) in the “R1” Residential zoning district. The subject parcel is owned by Gordon (Jr.) and Blanche Bagley.**

Mr. Taylor read the case.

Mr. Burke introduced himself, representing Mr. Bagley and his engineering colleague, Mr. Arey.

The existing building was constructed some time ago as a single-story building. In 1988, the building was renovated to become a two-story, split-level dwelling with entry facing away from Mascoma Lake. At the time of the renovation, two sliding doors were added on the upper floor and four on the lower floor, all facing the lake, with the assumed intent to construct decks later.

Shoreland protection regulations were enacted in 2008, creating the 50’ buffer zone prohibiting construction to the shorefront in that zone.

42 Mr. Burke came to the town in 2015 with a previous engineer, asking for the construction of the  
43 decks at that time. The board was split on the criteria being met, and the vote did not pass, with  
44 difficulty establishing hardship at that time. In 2015, Mr. Bagley obtained approval from the NH  
45 Department of Environmental Services (DES). Current contact with NH DES has indicated that  
46 they would likely get approval again (this is not a condition of ZBA approval).

47  
48 Mr. Arey's current engineering review established that without a deck on the upper floor, there is  
49 no second means of egress from that floor.

50  
51 Several abutting homes have decks or sections of their homes that encroach on the 50' shoreland  
52 buffer.

53  
54 Mr. Bagley plans to establish plantings for storm runoff to help prevent water from the deck  
55 making its way to the lake.

56  
57 Chair Diehn said that he did not believe putting a deck on the lakeside was the only way to solve  
58 the egress issue. Mr. Burke agreed.

59  
60 Chair Diehn asked why the intent from 30 years ago was relevant today. Mr. Burke said that they  
61 had attempted to do this twice now and has been the intent all along.

62  
63 The current plan has added a roof above the deck, but the footprint would remain the same size  
64 as in the 2015 case.

65  
66 Chair Diehn said that he felt they had not proven hardship. Mr. Lenihan agreed it was a different  
67 theory for needing the deck, but not additional facts to meet the criteria for a variance. Board  
68 members agreed

69  
70 Mr. Lenihan said that the board had reviewed a recent similar case with a need for emergency  
71 egress, and a staircase was sought in that case (not a deck). Board members agreed that the safety  
72 egress issue could be resolved without a deck of the proposed size.

73  
74 Ms. Brown said that the application referred to an existing patio. However, she did not see a  
75 patio when she went by in person, nor in the photos provided with the application. Mr. Arey  
76 responded that there does not appear to be a patio currently, but the note about it was part of the  
77 2015 application. The patio was either not constructed or has been overgrown.

78  
79 It is 21' from the back of the house to the bank that drops off to the lake.

80  
81 Chair Diehn asked for any members of the public who wished to speak on the case. There were  
82 none.

83

84 It is unknown if any of the neighboring properties that extend into the buffer were built after  
85 2008.

86  
87 Chair Diehn said that he did not feel the applicant had standing to come to the board again, and  
88 he believed he could dismiss the application. Mr. Burke said that he disagreed with Chair Diehn.  
89 Mr. Lenihan said that he felt the board should still come to a vote on this.

90  
91 ***Mr. Lenihan MOVED to deny the application for variance.***

92 ***Seconded by Ms. Johnson***

93  
94 Chair Diehn asked for further discussion on the motion.

95  
96 Members reviewed the findings of fact:

97 The parcel is 0.2 acres

98 -The DES permit from 2015 has expired.

99 -Satisfying the safety concern could be done without this application.

100 The footprint of the application is the same as the 2015 application.

101 -Property is the same as it has been since 1988.

102 -The Zoning Board does not grandfather intentions.

103 -The intention could have been realized any time before 2008, but it wasn't.

104  
105 Chair Diehn restated the motion – to deny the application because the applicant has not proven  
106 they have met the statutory requirement for unnecessary hardship, because the property has been  
107 in continuous use as it is today since 1988, and since the denied 2015 application to construct  
108 decks.

109  
110 ***Mr. Lenihan MOVED to deny the application for variance because the applicant has failed***  
111 ***to demonstrate that literal enforcement would cause unnecessary hardship, as evidenced by***  
112 ***the continued use of the property since 1988.***

113 ***Seconded by Ms. Johnson***

114 ***\* The Vote on the MOTION was approved (5-0).***

115  
116 Chair Diehn called a recess at 7:51 p.m.

117  
118 Ms. Brown noted for the record that she and Ms. Burroughs (applicant in the following case) had  
119 conversed, as Ms. Burroughs is an interpreter for the Shaker Museum. They have not talked  
120 about the case.

121  
122 Chair Diehn called the meeting back to order at 7:54 p.m.

123  
124 **B. Land Use Case # Z23-10-01, Charles Perkins and Linda Burroughs (trustees) have**  
125 **applied for an equitable waiver to resolve a long-standing lot line encroachment issue. The**  
126 **subject parcel is at 9 Water Lily Lane (tax map 10A, lot 40) and is within the “R1” zoning**

127 **district. This parcel is owned by the Norembega Revocable Trust (Charles Perkins and**  
128 **Linda Burroughs- trustees) and is 0.089 acres.**

129  
130 Chair Diehn read the criteria the board must decide have been proven to grant the equitable  
131 waiver:

132 1 – The request involves a dimensional requirement, not a use restriction

133 2 – The violation has existed for ten years or more with no enforcement action, including written  
134 notice, being commenced by the town.

135 3 – The nonconformity does not constitute a nuisance nor diminish the value or interfere with  
136 future uses of the other property in the area.

137 4 – The cost of correction far outweighs any public benefit to be gained.

138  
139 Mr. Sanborn reviewed the application. A boundary survey commissioned by the property owners  
140 last summer (2022) discovered the encroachment.

141  
142 The neighboring lot is currently 4620 square feet and will be made larger, which requires no  
143 variance or waiver. 294 square feet will transfer to that lot.

144  
145 The lot Mr. Perkins and Ms. Burroughs own is non-conforming and will be more non-  
146 conforming.

147  
148 The Planning Board has granted conditional approval of the lot line adjustment application to  
149 resolve the issue if the Zoning Board of Adjustment sees fit to approve the equitable waiver  
150 application.

151  
152 The house at 7 Water Lily Ln was built in 1988/1989. Portions of a bulkhead and attached shed  
153 encroach onto the applicant's property.

154  
155 All parties in the current boundary adjustment were not part of the original situation that created  
156 the encroachment. The issue is inherited by all parties. Predecessors were unaware of the issue.  
157 Lots in this development range from 2035 sf to 6500 sf. The adjustment requested does not  
158 create anything out of character for the development.

159  
160 There is no plan to do additional building at either property.

161  
162 **Ms. Brown MOVED to grant the application for the equitable waiver.**

163 **Seconded by Ms. Johnson**

164 **\* The Vote on the MOTION was approved (5-0).**

165  
166 The abutters who own the home with the encroachment commented that they agreed this was a  
167 good idea.

Findings of Fact:

- Lot is 3864 sf.
- The neighboring lot is 4620 sf.
- Lot 10A-040 is too small, and they want to make it smaller by a bit.
- Built in 1988 or 1989.
- No enforcement actions in the last ten years.
- A small part of the house is on the neighboring lot.
- Neighbors agreed to a boundary line adjustment to fix it.
- The new lot size is still in the character of the neighboring lots, which range between 2035-6500.

**III. NEW BUSINESS**

None.

**IV. OLD BUSINESS**

None.

**V. APPROVAL OF MINUTES: September 12, 2023**

*Ms. Brown MOVED* to approve the September 12, 2023 Minutes presented in the October 10, 2023 agenda packet as presented.

*Seconded by Ms. Johnson*

*\* The Vote on the MOTION was approved (5-0).*

**VI. NEXT MEETING: November 14, 2023**

**VII. ADJOURNMENT:**

*Chair Diehn* adjourned the meeting at 8:13 p.m.