

ENFIELD ZONING BOARD OF APPEALS  
REGULAR MEETING  
**MINUTES**  
MONDAY, January 24, 2022 7:00 PM  
ENFIELD TOWN HALL – COUNCIL CHAMBERS  
820 ENFIELD STREET – ENFIELD, CT

RECEIVED  
ENFIELD TOWN CLERK

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*Shela M Bailey*

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**Call to Order**

Councilor-At-Large Bob Cressotti called the meeting to order at 7:00 PM

**Roll Call**

Commissioner Turner took the roll and present were Commissioners MaryAnn Turner, Andrew Urbanowicz, Kelly Davis, Timothy Neville, and Alternate Commissioners Richard Stroiney, Robert Kwasnicki and Catherine Plopper. Absent was Commissioner Charles Mastroberti.

Also present were Ricardo Rachele, Zoning Enforcement Officer; Ben Winter, Assistant Town Planner and Laurie Whitten, Director of Development Services.

**Election of Officers and Review of Bylaws**

**Motion:** Commissioner Neville made a motion, seconded by Commissioner Kwasnicki, to nominate Commissioner Urbanowicz for Chair.

**Motion:** Commissioner Turner made a motion, seconded by Commissioner Neville, to close nominations.

The motion to close nominations passed with a 7-0-0 vote.

**Votes: 7-0-0**

The motion to appoint Commissioner Urbanowicz as Chair passed with a 6-0-1 vote with Commissioner Urbanowicz abstaining.

**Votes: 6-0-1**

**Motion:** Commissioner Davis made a motion, seconded by Commissioner Urbanowicz, to nominate Commissioner Neville for Vice Chair.

**Motion:** Commissioner Turner made a motion, seconded by Commissioner Neville, to close nominations.

The motion to close nominations passed with a 7-0-0 vote.

**Votes: 7-0-0**

The motion to appoint Commissioner Neville as Vice Chair passed with a 7-0-0 vote.

**Votes: 7-0-0**

**Motion:** Commissioner Stroiney made a motion, seconded by Commissioner Neville, to nominate Commissioner Turner for Secretary.

**Motion:** Commissioner Kwasnicki made a motion, seconded by Commissioner Neville, to close nominations.

The motion to close nominations passed with a 7-0-0 vote.

**Votes: 7-0-0**

The motion to appoint Commissioner Turner as Secretary passed with a 7-0-0 vote.

**Votes: 7-0-0**

### **Town Attorney Report**

Chairman Urbanowicz stated that the Commission received a memo with some docket entries. Commissioner Turner asked if they are going to be told what is going on with them or just that they are still in process. Ms. Whitten stated that they are typically just given the update until something happens.

### **Old Business**

- a. **ZBA# 2021-11-30** – 1658 King Street – Variance application of section 5.10 of the Zoning Regulations to allow a reduction of the required front yard setback at 1658 King Street; Scott Paglugh, Tri State Rentals, LLC, owner, Tom Parker, The Yarde Tavern, applicant; Map 13/Lot 36; HR-33 Zone.

Chairman Urbanowicz seated Alternate Commissioner Stroiney.

Commissioner Turner read the legal notice. Chairman Urbanowicz read the definition of a variance.

Tom Parker addressed the Commission. He stated that with COVID none of his customers want to wait inside, and he saw people almost get hit by cars a number of times. Mr. Parker stated that they put a deck up on an island so people can sit and be safe while they wait.

Commissioner Turner stated that what he did is a safety hazard, to which Mr. Parker replied that he was going to put bollards around the perimeter of the deck to protect it but they told him to stop. He went on to explain that the deck is on an existing island and is not changing the traffic flow or people coming in at all. Commissioner Turner stated that if he adds anything there, he is going to skinny up the driveway that goes in front of the deck, which will truly cause a safety issue.

Commissioner Turner stated that the Planning and Zoning Commission (PZC) did not give him the go to put in a second deck, which Mr. Parker confirmed. He stated that it took him years to

build a parking lot and a patio and he had had it, so he put up the two little decks to make sure people were safe and did not ask for permission. Commissioner Turner stated that the PCZ is moving quite quickly, so if he is having issues with the Zoning Office then he needs to talk to the Town Council about it. Mr. Parker explained how he had to start the entire process over again when he started due to staffing changes and other strife within the town of Enfield. He stated that he took it upon himself to do what is right for the safety of his customers.

Commissioner Turner stated that the ZBA has a very narrow focus and he is only in front of them about a variance. She stated that if there is an issue he needs to bring back to the PZC, he needs to bring it to them. Mr. Parker stated that he started at PZC and they instructed him to come before the ZBA because he is three feet short of whatever the variance is supposed to be due to the location of the right of way.

Commissioner Mastroberti joined the meeting.

Chairman Urbanowicz asked if there were any other places onsite that the deck could have been located. Mr. Parker stated that he could have possibly put it out back. Commissioner Turner asked if he could have put chairs or benches along the edge of the building rather than building the deck in the parking lot. Mr. Parker stated that he did not take any parking away and did not change anything that would change the flow of traffic.

Commissioner Turner stated that he is not just short to the street, but he is in the parking lot in the road. Mr. Parker described the way the decks were built in tiers, explaining that it is not two decks but rather one large tiered deck that was built at one time.

Commissioner Stroiney stated that the chart in their packets shows the building of the deck right on top of the island that was there, and stated that he may have extended it a bit more. Mr. Parker stated that they are about nine inches off of the curb, but are still on their own land.

Commissioner Neville asked if the applicant was finished, to which Mr. Parker replied that they stopped because they were told to by the town engineer. He explained what he still has to do in order to make it compliant, including adding a railing.

Commissioner Neville asked if people were uncomfortable waiting in line since the patio was put in, to which Mr. Parker replied that people just want to wait outside even if there are seats inside available. He stated that since people are allowed to sit outside with a drink now, they will sit outside everywhere when they used to sit and wait in their cars.

Commissioner Neville asked about the logistics of people putting their names in and waiting for a table. Mr. Parker explained that they have a computer for people to sign in and they are called when their table is ready.

Commissioner Neville asked if this is twelve months a year, to which Mr. Parker replied that the patio is very busy in the summertime and there are people everywhere. He stated that he does not want people wandering in the parking lot as it is an accident waiting to happen and he does not want to be responsible for that.

Commissioner Neville asked if the applicant is still in the process of getting it through channels in the town. Mr. Parker stated that it just needs to be finished but he has not gotten to it yet because he needs the Commission to grant him the variance for the road.

Commissioner Kwasnicki asked if the applicant has liability if a customer gets hurt, to which Mr. Parker replied that he is still liable.

Commissioner Stroiney asked if there is a way to move the deck closer to the building. Mr. Parker stated that they looked at a lot of options but they did not want to build a huge thing until they know that they can. He stated that he started this in July and it is now January.

Commissioner Stroiney stated that the island itself was fine in the setback, but once he built it up was the problem. Commissioner Turner stated that this is a PZC issue and would have been included in their conditions. She stated that they have to consider the hardship.

Commissioner Neville stated that it seems to him that this may be a temporary hardship that may very well take care of itself. Mr. Parker stated that outdoor dining is here to stay and he needs to make a bigger patio. Commissioner Neville stated that before he gets a variance he needs to get approval from the PZC and get it built.

Commissioner Turner asked if he will want these decks to become part of his patio when COVID disappears, to which Mr. Parker replied that he does. He stated that outside dining is in, and people are afraid to eat inside.

Commissioner Turner stated that this is a variance that goes with the property forever, and they have to stay within the regulations in front of them and 35 feet is the minimum. Mr. Parker stated that he started with the PZC. Commissioner Turner asked if this was a Cease & Desist, to which Mr. Rachele replied that it was a notice of violation that was initiated.

Commissioner Turner stated that the applicant has to get a variance first because he is in violation of the zoning rules. Chairman Urbanowicz asked Staff to clarify what exactly is being requested. Mr. Winter explained that the request is for 1.5 feet from the front line of the property boundary, making it 33.5 feet. Commissioner Neville asked if this includes the bollards, to which Mr. Parker replied that it does not and the bollards are about 12 inches.

Chairman Urbanowicz asked if anyone in the audience would like to speak in favor or against the application.

Charles Harris, 253 Jackson Road, addressed the Commission. Mr. Harris stated that the applicant is trying to keep people safe and socially distanced, so he does not understand why this is being prohibited.

Chairman Urbanowicz asked if anyone else in the audience would like to speak; no one came forward.

**Motion:** Commissioner Turner made a motion to close the Public Hearing; there was no second.

Ms. Whitten asked if the applicant had exhausted all options of other locations, to which Mr. Parker replied that this was just the perfect spot. Ms. Whitten stated that she is concerned he is going to encroach on the state right of way with his bollards, which cannot happen.

The motion passed with a 5-0-0 vote.

**Votes: 5-0-0**

Commissioner Turner stated that there is a safety problem even if the bollards go up; Commissioner Davis agreed. Commissioner Turner stated that there are opportunities for a seating place but it is not here. She stated that they cannot put him in the state right of way. Commissioner Neville stated that he agrees with Commissioner Turner, and he is wondering if there is another alternative to deal with this as it is a safety problem.

Chairman Urbanowicz stated that he has a hard time finding the hardship with this as it could be moved to be in conformity with the setbacks. He stated that the hardship is a self-imposed hardship. Commissioner Davis stated that there are other places the waiting area can go, and safety is a huge factor.

Commissioner Turner stated that she did not receive the vote sheet.

**Motion:** Commissioner Turner made a motion, seconded by Commissioner Davis, to approve ZBA #2021-11-30.

The motion failed with a 0-5-0 vote.

**Votes: 0-5-0**

Commissioner Turner stated that in the future she really needs the document to record the Commissioners' votes and reasons. She asked the reasons for denial, which Chairman Urbanowicz stated are that the Commission found it to be a self-imposed hardship and other opportunities were available onsite to accommodate the project without needing the variance. Commissioner Turner stated that safety was also an issue and passed around the sheet for the Commissioners to sign.

### **New Business**

- a. **ZBA# 2021-12-03** — 1375 Enfield St — Appeal of the Zoning Enforcement Officer's Cease & Desist Order following a Notice of Violation of section 4.20 — Residential Use Table; Devin Terhune owner/applicant; Map 18/Lot 243; I-1 Zone.

Chairman Urbanowicz recused himself as he had previously represented the applicants and would have a conflict voting. He stated that Alternate Commissioner Stroiney would remain seated and Vice Chair Neville will take over as Chair for this application. He stated that Commissioner Mastroberti is seated as a voting member.

Attorney Carl Landolina addressed the Commission along with Dugan Terhune, who occupies the property owned by his brother and father, Devin and Theodore Terhune.

Mr. Landolina stated that they put up signs and notified abutters in accordance with the regulations. He submitted copies of the certified letters to the Commission. Mr. Landolina stated that this is not a variance request and they do not have to show any hardship. He stated that Mr. Rachele notified his clients that they are not allowed to operate a business on the property, and at that time there were a couple of snow blowers or lawnmowers out front with a For Sale sign.

Mr. Landolina stated that small engine repair is a hobby for Mr. Terhune and it is not his livelihood. He stated that the activity goes on in his garage, and his yard where the activity takes place is completely fenced in. Mr. Landolina stated that last year he sold less than ten lawnmowers and less than ten snow blowers.

Mr. Landolina stated that it is a residential neighborhood and having the lawnmowers and snow blowers out front with a For Sale sign is a problem, so the applicant is not going to do that anymore. He stated that the question is when something turns from an accessory use to something else. Mr. Landolina stated that they are all allowed to tinker with cars or lawnmowers on their property, and this has not turned from a hobby into a business and is not a means of income.

Mr. Landolina explained why they cannot go to the PZC for this, and appealing the cease & desist makes this a one-off rather than something that is done town-wide. He stated that it would not run with the land and would be personal in nature to the owner of the property.

Mr. Landolina stated that the applicant does not advertise and does not have signs anywhere. He stated that the options are to deny the request, overturn the Cease & Desist as written, or modify the Cease & Desist. Mr. Landolina stated that he is not asking them to overturn the Cease & Desist in full, but rather is proposing that the applicant be allowed to go forward with no equipment in the front yard and all activity taking place in the fenced area. He stated that if there are any transactions they all will take place off-site.

Mr. Landolina read a letter from Shirley Rinaldi, 1390 Enfield Street. The letter stated that she has no concerns with the applicant's hobby and the abutting property is not being impacted.

Commissioner Kwasnicki asked if the applicant has a Tax ID, to which Mr. Terhune replied that he does not. Commissioner Kwasnicki asked if he has a registered business for repair and maintenance with the town, to which Mr. Terhune replied that he does not.

Commissioner Stroiney asked how many snow blowers or lawnmowers he fixes throughout the course of a year. Mr. Terhune stated that it is under ten snow blowers and under ten lawnmowers. He went on to state that he collects them as a hobby, and he has had some snow blowers in his garage for 35 years.

Commissioner Stroiney asked if he has anyone helping him fix them, to which Mr. Terhune replied that he does not.

Commissioner Turner asked why the Zoning Enforcement Officer has not been able to come out and survey the area, to which Mr. Landolina replied that this was at his insistence. Commissioner Turner stated that they are a very narrow board. She asked how deep the property is, to which Mr. Terhune replied that it is very deep. Commissioner Turner asked if there is a garage or shed further back in the property, to which Mr. Terhune replied that there is not.

Mr. Rachele stated that the report dates back to 2019, and he took pictures throughout the winters and the summer. He stated that the machines have been out in front at random times over the last couple of years, so this has been an ongoing issue. He stated that a notice of violation had to be sent out due to the continuous activity. Mr. Rachele submitted aerial photographs to the Commission from 2016 through 2019, stating that the activity on the property includes lawn equipment and cars. He stated that a violation issue is not dismissed just because it is hidden by a fence.

Commissioner Turner asked if the cars can be seen from the street, to which Mr. Rachele replied that they cannot.

Commissioner Kwasnicki asked if there are any special considerations for the Historic District that are relative to this. Mr. Rachele stated that there are not and it would strictly be under the regulations. He stated that the original complaint came from a couple of members of the Historic District Commission.

Commissioner Turner asked if the applicant has been cited in the past, to which Mr. Rachele replied that he has not. She asked if the Historic District has ever approached him, to which Mr. Rachele replied that he has a written complaint from one of the members.

Commissioner Kwasnicki stated that the Cease & Desist has to do with small motor repair and service business. Mr. Rachele stated that what is considered small scale is subjective, and repairing engines usually takes place in a business district. He stated that he finds it hard to sign off on a home occupation under the regulations as they exist.

Commissioner Kwasnicki asked if the cars are part of the issue, to which Mr. Rachele replied that they are not and he is just bringing to the Commission's attention what is actually on the property. Commissioner Kwasnicki asked if the Historic District Commission has any special regulations that pertain to this. Mr. Rachele stated that they do not.

Commissioner Neville asked if the violation itself is a zoning issue rather than a historic issue. Mr. Rachele stated that it is the operation of a business that is not allowed in a residential district.

Mr. Landolina stated that he had some conversations with Mr. Rachele, and he reads the home occupation regulations to allow for interior activities rather than activities outside of the dwelling. He stated that based on those conversations he requested a cease & desist so they can figure it out from there, as this was the best process. Mr. Landolina stated that they would have been before the Commission no matter what.

Commissioner Neville asked if Staff told the applicant that they did not qualify for a home occupation. Mr. Rachele stated that this is correct and due to the amount of activity he was unable to sign off on it. He went on to state that home occupations are within the home, and the equipment in this case was kept outside. Mr. Rachele stated that Industrial or Business zones allow for 20% of storage outside, and the area outside in this case was about 46%.

Commissioner Turner asked for clarification on the Historic District regulations. Mr. Rachele stated that the violation aspects of it are involved and not very to the point, and lacking in any type of enforcement.

Commissioner Neville stated that when he drove by there were a lot of vehicles and he did not see anyone else with these things there. He stated that it is the frequency and the number that are the issues. Mr. Rachele stated that most of the activity from his observations was on weekends.

Commissioner Turner stated that the letter says there are other businesses in this area. Mr. Landolina stated that this was from one of the abutters. Commissioner Turner stated that she did not see any other type of businesses.

Commissioner Kwasnicki asked if the nature of this would change if there were no For Sale signs when the equipment was out on the front lawn. Mr. Rachele stated that he would still get complaints that mowers are sitting on the front lawn.

Commissioner Kwasnicki asked if the nature of this would change if it was a certain amount of lawnmowers sitting out a certain amount of days. Mr. Rachele stated that this does not play any role in it and he does not see this as a type of business that can operate out of this residential property. Commissioner Kwasnicki asked for clarification on what is meant by activity in terms of the Cease & Desist. Mr. Rachele stated that it would be the frequency of lawnmowers or snow blowers being put out in front.

Commissioner Kwasnicki asked if he observed public traffic from this activity, to which Mr. Rachele replied that people definitely stop or park in the driveway to look at the lawnmowers. Commissioner Kwasnicki asked if tag sales are relevant to this. Mr. Rachele stated that tag sales are allowed four times per year for one property.

Commissioner Turner stated that holding up the Cease & Desist does not take away the applicant's hobby, it just stops him from running a business. Mr. Landolina stated that the applicant has agreed not to have anything in the front yard, and removed it all right away. He stated that the applicant would like the Commission to allow him to continue his hobby, and if someone wants to buy one of the machines he can put it in his truck and deliver it to the person's house.

Commissioner Stroiney stated that the statute says minimal customers may visit the business on a regular basis. He stated that a concern is traffic coming through the home and also the definition of minimal. Mr. Landolina stated that last year the applicant sold less than 20 machines, which is less than two cars per month. Commissioner Stroiney stated that not every customer will buy, and what is happening at this location makes it look like a business.



Mr. Rachele read through a portion of the regulations pertaining to home occupation. Commissioner Turner stated that within the building could be considered within the garage, to which Mr. Rachele replied that it says primary building.

Ms. Whitten stated that they also allow yard maintenance services, but even there all storage of tools and equipment must be inside the dwelling or an accessory structure. She stated that they have not been able to go back there and look at the equipment, but small engine repair and automotive maintenance is not permitted as a business in any residential property.

Commissioner Kwasnicki stated that they have not decided whether this is a home occupation. He asked what the applicant does for his main occupation. Mr. Terhune stated that this is not his living and is a hobby. He stated that he is not currently working. Commissioner Neville stated that selling 20 units per year does not mean that there was not forty units for sale. He stated that if it is a business it does not meet the criteria for home occupation.

Mr. Landolina stated that the best course of action for his client is to convince the Commission that this is not a business but rather is a hobby where occasionally there are some sales going on. He stated that the equipment will no longer be on the lawn so this is not a concern anymore. Mr. Landolina stated that there is no advertising and there will be no equipment or signs on the property.

Commissioner Mastroberti asked if the Cease & Desist is for not putting stuff on the lawn, or for having the business at his house. Mr. Rachele stated that it is for operating a business in a residential zone.

Vice Chair Neville asked if anyone in the audience would like to speak.

Rebecca Vick, 1381 Enfield Street, addressed the Commission. She stated that there is a business directly next door to the applicant with about 50 cars per day coming in and out, so anyone coming to look at the lawnmowers is not adding to the traffic on Route 5. Ms. Vick stated that the activity going on at the applicant's property is not detracting from the character of the neighborhood, and his house is perfectly maintained. She stated that her engineering husband tinkers in the garage and has sold things on Craigslist occasionally, and her neighbor has a sign out almost daily saying that he sells kids' bicycles.

Ms. Vick stated that she has lived in her home for five years and she was not even aware that a business is being operated next door. She stated that she can only see any clutter from the second story of her house, and her garage is a lot messier than his. Ms. Vick concluded that this is nothing out of the ordinary from anything else happening on Enfield Street.

Israel Mercado, 5 ½ Bridge Lane, stated that he has known the applicant for twelve years and has helped him with his roses. Mr. Mercado stated that the applicant has tried to improve the property to make it look better. He stated that the applicant gives stuff away to people who need it, and is not really running a business.

Vice Chair Neville asked three times if anyone else would like to speak; no one came forward.

Ms. Whitten stated that they should let the applicant speak again before closing the Public Hearing. Mr. Landolina stated that he will take on the responsibility of not allowing the Commission to have eyes on the backyard. He stated that if they want to continue the Public Hearing, Mr. Rachele or the Commissioners can go take a look around.

**Motion:** Commissioner Stroiney made a motion, seconded by Commissioner Kwasnicki, to close the Public Hearing.

Ms. Whitten stated that if the Commission closes the Public Hearing they cannot continue it. Commissioner Turner stated that the Commission can have some discussion now without closing the Public Hearing.

Commissioner Stroiney withdrew his motion; Commissioner Kwasnicki withdrew his second.

Commissioner Turner stated that the Commission should be open to any more information and allow the Zoning Enforcement Officer to look around. Commissioner Neville agreed, stating that they are trying to enforce the rules but also work with the citizens.

**Motion:** Commissioner Stroiney made a motion, seconded by Commissioner Davis, to table ZBA #2021-12-03 until next month.

The motion passed with a 5-0-0 vote.

**Votes: 5-0-0**

Commissioner Turner reminded the Commission to keep their paperwork. Chairman Urbanowicz joined the meeting.

### **Approval of Minutes**

b. December 27, 2021 – *Regular Meeting*

**Motion:** Commissioner Turner made a motion, seconded by Commissioner Kwasnicki, to approve the minutes from the December 27, 2021 Regular Meeting.

Commissioner Turner stated that the minutes are very limited of what happened in the meeting. Commissioner Stroiney stated that there is some content that needs to be rebuilt back in as he watched the meeting. Commissioner Turner stated that she would like to table the minutes until they can be beefed up.

Commissioner Turner withdrew her motion and Commissioner Kwasnicki withdrew his second.

**Motion:** Commissioner Mastroberti made a motion, seconded by Commissioner Neville, to table the minutes.

The motion passed with a 5-0-0 vote.

**Votes: 5-0-0**

**Other Business**

Commissioner Turner stated that she sent Senator Kissel a document regarding the K7, as herself and not a representative of the Commission. She stated that the K7 process has to change and submitted a copy of her letter to Staff. Commissioner Turner stated that the K7 from the previous meeting is still sitting as she has not signed it yet. She stated that it was said in the meeting that the K7 would be signed when they go to PZC rather than her signing the K7 now. Ms. Whitten stated that they should not sign it until PZC has approved it. Commissioner Turner stated that they have not responded and are not on the docket for PZC.

Mr. Rachele stated that the actual business name is not the name that is on the K7, and he will follow up again tomorrow. Commissioner Turner stated that even when he gives them this information, the K7 sits until he is on the docket with PZC. Mr. Rachele stated that the Cease & Desist is in place until the situation is remedied. Ms. Whitten stated that the Connecticut Association of Zoning Enforcement Officials (CAZEO) and the American Planning Association have been fighting to get this out of the ZBA's hands for years.

Chairman Urbanowicz asked if any response had been received from Senator Kissel's office, to which Commissioner Turner replied that it had. Commissioner Kwasnicki thanked Commissioner Turner for taking the initiative to go the legislative route to remedy this situation.

Commissioner Turner stated that she would like to ask former Chairman LaRosa to come back next month for them to formally thank him; Commissioner Kwasnicki agreed. Ms. Whitten requested that they let Staff know if they want to do something during the meeting so it can be added to the agenda.

Commissioner Neville stated that they should discuss the bylaws, to which Ms. Whitten replied that there are some things that need to be discussed. Discussion took place regarding the most current set of bylaws, with Ms. Whitten stating that they cannot find any bylaws more recent than 2013. Commissioner Turner stated that she will send them to Staff as they spent a lot of time on the bylaws much more recently.

**Adjournment**

**Motion:** Commissioner Stroiney made a motion, seconded by Commissioner Kwasnicki, to adjourn.

Prepared by: Elizabeth Bouley, Recording Secretary

Respectfully Submitted,

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Mary Ann Turner, Secretary