

Town of Newport
Zoning Board of Adjustment
March 16, 2023 6:30 PM
Board of Selectmen's Room/Municipal Building
15 Sunapee Street/Newport, NH

PRESENT BOS ROOM: Ben Nelson, Chairman; Tim Beard, Vice Chairman; Chris Whalen, Scott McCoy, alternate; Bert Spaulding, Sr.; Jeffrey Kessler, BOS Representative

ABSENT MEMBERS: none

VIDEOGRAPHER: NCTV

STAFF PRESENT: Christina Donovan, Planning and Zoning Administrator

CALL TO ORDER: Chairman Nelson called the meeting to order at 6:33 p.m. followed by a roll call of members present. Chairman Nelson appointed Scott McCoy as alternate at the March 16, 2023 meeting.

COMMUNITY MEMBERS: Heath Marsden, Rick Kloeppel, Thomas Brennan (abutters Case 1142), and Nancy Cadenhead, Peter Cadenhead, Linda Taylor (abutters Case 1144), Hunter Rieseberg

ADMINISTRATION: Case 1118 Request a 2 year extension.

Ms. Donovan explained Case 1118 was the 25 unit complex on 21 Central Street. Ms. Donovan said it was an early request; their granted Variance will expire (lapse) in August 2023. Mr. Beard had asked for more information. Chairman Nelson asked her to bring the information pertaining to the variance in April. Ms. Donovan will bring the Case's supporting documents to the ZBA meeting April 20, 2023.

Chairman Nelson stated that he had received a complaint/observation about minutes. He asked if they were completed within five days of the meeting. Ms. Donovan said yes. Chairman Nelson said the individual had noted the minutes were not on the website. Ms. Donovan said she uploaded the approved minutes and posted a notice if there wasn't a meeting. She would make sure that the website is up-to-date. Chairman Nelson and Ms. Donovan discussed the law stating the minutes have to be available (within 5 business days); Ms. Donovan said that they were in her office and she could send them to anyone that requests them. Chairman Nelson asked that a notice be put on the website stating the (draft) minutes will be available in the Zoning Office. Mr. Spaulding, Sr. added that if Ms. Donovan distributed minutes that were not approved; she would have to make sure that every page had "DRAFT" on them. Ms. Donovan agreed. Ms. Donovan stressed Draft/Approved Minutes were always available.

MINUTES: November 17, 2023; February 16, 2023

November 17, 2022

Mr. Whalen made a motion *to approve the minutes of the November 17, 2022 ZBA meeting as presented*. It was seconded by Mr. McCoy. *The motion passed 4-0-2 (Kessler and Spaulding abstained).*

February 16, 2023

Mr. Kessler made a motion *to approve the minutes of the February 16, 2022 ZBA meeting*. It was seconded by Mr. Whalen. After discussion on the minutes, noted procedural points of order (notice of deliberations) Mr. Kessler asked the Chair to be able to respond to the points of order made. He began citing from State of NH Zoning Board Deliberations and Procedures. Chairman Nelson asked to review the minutes and their accuracy. Mr. Kessler stated, as a correction, that Mr. Spaulding was listed as a (Board) member present. He noted that on page 8; two paragraphs from the bottom, the minutes state that Mr. Spaulding, Sr. entered the room at 8:12 p.m. and spoke to the board as a 'citizen'; not as a Board member. Board members discussed the use and identification of a board member in the minutes. Mr. Spaulding, Sr. made comments about what happened at the February meeting. Mr. Kessler again told the Chair that he was questioning the reason Mr. Spaulding was listed as a Board member in attendance. When acknowledged by Chairman Nelson, Maura Stetson (recording secretary) asked him to note page 8 'he spoke as a citizen'. She then said, if the Board would jump to page 10, the line above Case #1142 North Newport Holdings, it stated: "Acting Chairman Beard invited Board member Mr. Spaulding, Sr. to

sit for the new case...” She stated that was the reason the recording secretary listed him as a Board member. Chairman Nelson thanked Mrs. Stetson. Chairman Nelson asked if there were any content corrections. Mr. Spaulding, Sr. addressed Mr. Kessler and stated that as Chairman of the BOS he could ask for his resignation. He would get it (and Mr. Spaulding would participate as a citizen). Chairman Nelson told the Board they digressed, he asked for anything additional on the content of the minutes. Mr. Spaulding, Sr. asked to make additional points. He listed content points on pages 1 & 2 he believed were important for the public to know. Chairman Nelson asked for approval of the minutes as presented. ***The motion passed 4-0-2 (Spaulding and Nelson abstained).***

When acknowledged, Mr. Kessler addressed the Board and cited from a document called Board of Adjustment in NH. It is online, he asked individuals to search under Board of Adjustment in NH; Section 3, bottom of page 20. He read aloud from an explanation of the rules of procedure while in Deliberations of a Case. Mr. Spaulding, Sr. stated the nuance of the phrasing. The Board members having differing opinions, Chairman Nelson moved on to the work of the ZBA. Chairman Nelson reviewed the ZBA format for applicants and abutters present. There were no questions concerning the format. Mr. Beard asked if the cases could be heard out of order so some applicants could be heard and leave the meeting.

CONTINUED BUSINESS:

Case # 1142: North Newport Holdings (Owner), Avanru Development (Agent): Request a Variance from the terms of Article VIII, Section 803 of the Zoning Ordinance to increase the height allowed of a structure in the Airport Zone. The property is identified as Map 218 Lot 004 and is located on North Main Street in the Rural (R) Zoning District. **Request to Continue**

Ms. Donovan addressed the Board and stated that the applicant had requested in writing a continuance to the April 20, 2023 ZBA meeting. It was the prerogative of the ZBA. Chairman Nelson asked for a motion to continue the case to date and time certain. After a brief discussion, Mr. Beard proposed denying the continuance. The request made three meetings in a row. The Board always allows one continuance; to repeatedly grant them a continuance was not fair to other applicants who did get their information in on time. Mr. Beard made a motion ***to deny the continuance for Case #1142***. It was seconded by Mr. Spaulding, Sr. Mr. Kessler clarified that the Board was not denying the applicant being seen. He was told that once the applicant had all his information together he would have to reapply to be heard by the Zoning Board of Adjustments. The applicant would start from “square one” as a new case. ***The motion passed 5-0-1 (Whalen abstained).***

Chairman Nelson reviewed step by step the ZBA format to the applicants and abutters present.

NEW BUSINESS:

Mr. Spaulding, Sr. recused himself from Case 1141.

Case #1141-1: 169 Sunapee Street, LLC (Owner) Jon Livadas (agent): Request a Variance from the terms of Article IV, Section 409.7 of the Zoning Ordinance to reduce the required off-street parking for residential. The property is identified as Map 112 Lot 032 and is located at 169 Sunapee Street in the Industrial (I) Zoning District.

Chairman Nelson opened Case #1141. Mr. Livadas had arranged to attend the meeting via zoom. He had not signed in and was not in attendance (physically) at the meeting. Ms. Donovan requested that his case be moved to the end of the meeting. After a brief discussion, Chairman Nelson agreed with her request. Mr. Spaulding, Sr. retook his seat with the Board.

Case #1143: Jonathan Lain: Request a Variance from the terms of Article II Section 207.1 of the Zoning Ordinance to allow structures without a residence. The property is identified as Map 246 Lot 016 and is located on South Main Street in the Single Family Residential (R1) Zoning District.

Mr. Lain gave a synopsis of the variance he was requesting from the Board. He stated the property is currently used for storage and it abuts the Newport Public Works Department garage on Route 10 south.

He would like to construct a shed without a residence. He already had shipping containers on the lot to store personal/work items. He has a DOT approved driveway. The property is not visible from South Main Street and is one property away from the rural zone (where he would not need a variance). There were no abutters in attendance. The Board members stated that other properties in the area also stored items, and had no residence. The proposal is more in keeping with the neighborhood than a single family house. Mr. Kessler stated the applicant was requesting a variance 'after the fact' (4 years). He asked if there had been any complaints; if the Town had had any complaints. He was told no. Ms. Donovan said it was brought to her attention when the owner wanted to install electricity. She could not give a permit without a 911 number. The applicant will get a 911 number (for fire/EMT/police use) and electrical permit upon the ZBA granting his variance. Ms. Donovan was asked if individuals needed a permit for storage containers on their property. She said yes; the applicant has been made aware of the infraction. 'after the fact' permitting in Newport is double the cost: \$25 to \$50 and \$.10/square foot. There were no additional penalties; everything had to follow current zoning ordinances and be inspected. Mr. Beard stated the applicant needed a DOT permit (has), local 911, electrical and building permits. He will be good to go. Mr. Whalen made a motion *to go into Deliberations*. It was seconded by Mr. Beard. ***The motion passed 6-0-0.***

Chairman Nelson asked for motions on prongs one through five.

Variance Statement of Reasons and Discussion

Mr. Kessler made a motion that: *Granting the Variance would not be contrary to the public interest because the use is the same as the surrounding properties and is located on a state highway*. It was seconded by Mr. Spaulding, Sr. Chairman Nelson called for a vote. ***The motion passed 6-0-0.***

Mr. Beard made a motion that: *The spirit of the ordinance would be observed because the property owner will be able to use his property fully and it will fit in with the rest of the surrounding properties*. It was seconded by Mr. Kessler. Chairman Nelson called for a vote. ***The motion passed 6-0-0.***

Mr. Kessler made a motion that: *Granting the Variance would do substantial justice because it will allow the property owners to continue to use their property in a beneficial manner*. It was seconded by Mr. Whalen. Chairman Nelson called for discussion. There was no discussion. Chairman Nelson called for a vote. ***The motion passed 6-0-0.***

Mr. McCoy made a motion that: *The values of the surrounding properties would not be diminished because there are at least two other properties with the same purpose and it fits in with the overall surrounding properties*. It was seconded by Mr. Beard. There was no discussion. Chairman Nelson called for a vote. ***The motion passed 6-0-0.***

Unnecessary hardship

Mr. Kessler made a motion: Owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because:

A.i. The use is similar to surrounding properties; it is on a state road

AND:

A.ii. that the proposed use is a reasonable one because there will be no impact on surrounding (R1) properties in the area. It was seconded by Mr. Spaulding, Sr. In discussion, Chairman Nelson stated it was more suited to the use than R1. Chairman Nelson called for a vote. ***The motion passed 6-0-0.***

Chairman Nelson called for a motion to memorialize the decision of the ZBA to grant the Variance. Mr. Kessler made a motion to ***grant the Variance for Case #1143: Jonathan Lain as presented***. It was seconded by Mr. Beard. There was no discussion. Chairman Nelson called for a vote. ***The motion passed 6-0-0.***

Ms. Donovan asked Chairman Nelson to sign the Notice of Decision. She told Mr. Lain she would send him the Notice of Decision. He could also call her office.

Case #1144: Scott Stanton: Request a Variance from the terms of Article II Section 206.3 of the Zoning Ordinance to reduce the required 200 linear feet of road frontage. The property is identified as Map 231 Lot 022 and is located at 416 Bradford Road in the Rural (R) Zoning District.

Chairman Nelson opened Case #1144.

Ms. Donovan addressed Chairman Nelson and stated that Mr. Stanton had arranged to attend via zoom. He had not signed in (Mr. Livadas was not in attendance either). She requested that his case be moved to the end of the agenda.

There were abutters present that disagreed with this request. They wanted to be heard about the Case. Ms. Donovan explained the applicant was not in attendance, the case could not be heard without him present. Chairman Nelson addressed the abutters and stated the following Case (1145) would not take long. He asked them for their patience.

Case #1145: Sandra Gray: Request a Variance from the terms of Article II Section 206.1 of the Zoning Ordinance to allow a home with less than 600 square feet. The property is identified as Map 233 Lot 021 and is located on John Stark Highway in the Rural (R) Zoning District.

Ms. Sandra Gray gave a synopsis of the tiny home they would like to put on the lot. It was stick built and was 204 square feet (photos were included in the Board packets). There were no abutters present. Ms. Donovan was asked about driveway and other permits. She stated that if the applicant was granted a variance, she would need to get all permitting: DOT driveway, well and building and electrical permits. Mrs. Gray has not purchased the property; thus nothing has been permitted (a tiny home goes through the same permitting process as a regular sized one). The size of the lot was discussed in relation to the requirements for septic and wells by the State of NH; state approved septic system, and it being a grandfathered lot. The variance was the first step; she would get into state permitting after it was granted. When asked about the slab it will sit on, Ms. Donovan explained the regulations for concrete slabs. Mr. Whalen made a motion *to go into Deliberations*. It was seconded by Mr. Kessler. ***The motion passed 6-0-0.***

Chairman Nelson asked for motions on prongs one through five.

Variance Statement of Reasons and Discussion

Mr. Kessler made a motion that: ***Granting the Variance would not be contrary to the public interest because the size of the house is the prerogative of the owners and it will fit well on the smaller lot.*** It was seconded by Mr. Beard. Chairman Nelson called for a vote. ***The motion passed 6-0-0.***

Mr. Whalen made a motion that: ***The spirit of the ordinance would be observed because it allows the owner to occupy her property as she sees fit along with all requirements.*** It was seconded by Mr. Kessler. In discussion, Mr. Spaulding, Sr. asked that “all building” requirements be added. The motion then read: Mr. Whalen made a motion that: ***The spirit of the ordinance would be observed because it allows the owner to occupy her property as she sees fit along with all building requirements.*** It was seconded by Mr. Kessler. Chairman Nelson called for a vote on the amended motion. ***The motion passed 6-0-0.***

Mr. Beard made a motion that: ***Granting the Variance would do substantial justice because it allows the owner to utilize her property as she sees fit.*** It was seconded by Mr. Kessler. Chairman Nelson called for discussion. There was no discussion. Chairman Nelson called for a vote. ***The motion passed 6-0-0.***

Mr. McCoy made a motion that: ***The values of the surrounding properties would not be diminished because due to the nature of the size of the building, setbacks and grandfathered status.*** It was seconded by Mr. Whalen. Chairman Nelson called for a vote. ***The motion passed 6-0-0.***

Unnecessary hardship

Mr. Kessler made a motion: Owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because:

A.i. There is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because the dwelling will fit the property on the sized lot

AND:

A.ii. that the proposed use is a reasonable one because it will allow the applicant to build on their property as they see fit. It was seconded by Mr. Beard. There was no discussion. Chairman Nelson called for a vote. ***The motion passed 6-0-0.***

Chairman Nelson called for a motion to memorialize the decision of the ZBA to grant the Variance. Mr. Beard made a motion that ***the Board grant the Variance for Case #1145 Sandra Gray with the condition that she complies with all necessary permitting.*** It was seconded by Mr. Kessler. Chairman Nelson called for a vote. ***The motion passed 6-0-0.***

Mrs. Gray thanked the Board.

Case #1144: Scott Stanton: Request a Variance from the terms of Article II Section 206.3 of the Zoning Ordinance to reduce the required 200 linear feet of road frontage. The property is identified as Map 231 Lot 022 and is located at 416 Bradford Road in the Rural (R) Zoning District.

When asked, Ms. Donovan stated the applicant was not in attendance.

Mrs. Cadenhead, abutter, in attendance asked what Mr. Stanton was proposing; it was not stated in their public notice. She asked if it was regarding a driveway or a road. Ms. Donovan said that Mr. Stanton was requesting a reduction in sq. ft. for his lot; he is planning to subdivide his property; one lot would have less than 200' of road frontage; 184 feet (the minimum size to have in their zoning district). Mrs. Cadenhead thanked Ms. Donovan for the explanation. Ms. Donovan asked that the Board not discussed the case any further. Ms. Donovan requested a continuance of Case # 1144 and Case #1141-1 to the April 20, 2023 ZBA meeting

Mr. Beard made a motion ***to continue Case # 1144 to April 20, 2023 at 6:30 p.m. in the BOS room.*** It was seconded by Mr. Kessler. ***The motion passed 6-0-0.***

Ms. Donovan apologized to the abutters for coming to the meeting and not hearing the case. She took their phone number to contact them in April.

Mr. Kessler made a motion ***to continue Case #1141-1 to April 20, 2023 at 6:30 pm in the BOS room.*** It was seconded by Mr. McCoy. ***The motion passed 5-0-1 (Spaulding abstained).***

Mr. Whalen asked to find out if there was an issue with the zoom. Ms. Donovan would look into it.

Mr. Beard asked that the ZBA get away from the use of zoom. Its use is not required any more. Zoom is a great option for abutters. The applicants needed to be in front of the Zoning Board members. He said that at the February meeting one packet had included two requests. He said it was Ms. Donovan's job, it was the applicants job to ensure everything was in order to make it easier and clearer to make their decisions.

Chairman Nelson said the use of zoom was the Board's prerogative (now that the Governor's state of emergency had expired). The Board could request that the applicant come in person. Mr. Kessler asked if the Planning Board had the same issue with zoom. Ms. Donovan said the use of zoom with the Planning Board was more complicated. It is harder to translate a site plan review via zoom. It was stated that there are more questions and misunderstandings. If future applicants want to zoom in, they should have a representative in the BOS room.

Mr. Beard made a motion ***that all applicants or their representative(s) need to be present in the BOS room to have their Case heard by the Zoning Board.*** It was seconded by Mr. Whalen. In discussion It was requested to add this procedure to the ZBA Rules of Procedure. Ms. Donovan was asked if there was an adoption procedure to make it part of the Rules of Procedure. He was told: make a motion to add it to the rules of procedure, Ms. Donovan would add it, she would bring in drafts with the addition, the Board

would vote on its inclusion. The Rules of Procedure would have a revised date added to the signature page. The Board agreed the new policy will be effective for all new cases as of March 16, 2023. Mr. Spaulding, Sr. asked that the word "interim" be added. Mr. Whalen and Chairman Nelson agreed, stating that the procedural change will begin at the April 20, 2023 ZBA meeting. The vote made by the Board sealed the change in the interim of this month's vote and the cases being voted on at the April 20, 2023 meeting.

The motion then read: Mr. Beard made a motion ***that all applicants or their representative(s) need to be present in the BOS room to have their Case heard by the Zoning Board as of April 20, 2023. The requirement will be effective in the interim of the April 20, 2023 meeting.*** It was seconded by Mr. Whalen. Ms. Donovan was asked to send notices to all applicants notifying them of the revision. She agreed. There was a discussion on the initial use of zoom, its continued use, no needing to change the Rules of Procedure, just going back to the way the Board ran prior to Covid. Mr. Kessler spoke in favor of the change, stating it made the experience more personal. ***The motion passed 6-0-0.***

Mr. Beard asked Ms. Donovan to provide information on Case #1118 for the April 20, 2023 meeting. Chairman Nelson called for a motion to adjourn.

On a motion by Mr. Whalen, seconded by Mr. McCoy; ***the Board voted to adjourn at 7:47 p.m. The motion passed 6-0-0.***

Respectfully submitted,



Maura Stetson
Scribe

Approved on: April 20, 2023

The next meeting of the ZBA will be on April 20, 2023 at 6:30 pm in the Board of Selectmen Room.