

**Zoning Board of Adjustment**  
**May 28, 2020 6:30 PM**  
**Board of Selectmen's Room/Municipal Building**  
**15 Sunapee Street/Newport, NH**

**Remote Access:**

**Zoom.com - Meeting ID:** 878 3851 5644    **Password:** 569656  
+1 (253)215-8787 US (audio only, long-distance fees may apply)

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**PRESENT BOS ROOM:** Ben Nelson, Vice Chairman; Jeffrey Kessler, BOS Representative; Tim Beard

**PRESENT via ZOOM:** Melissa Saccento, Chairman

**PRESENT via PHONE:** no one

**ABSENT MEMBERS:** Scott McCoy, Alternate

**VIDEOGRAPHER:** John Lunn, NCTV

**STAFF PRESENT:** Christina Donovan, Zoning Administrator

**ABUTTERS PRESENT:** Maureen Marcotte, Tony Zullo, Bob, and others

**CALL TO ORDER:** Chairman Saccento called the meeting of the ZBA to order at 6:45 p.m. Chairman Saccento introduced herself (Zoom) and appointed Vice Chairman Nelson, who was present in the BOS Room, as Acting Chairman to conduct the May 28, 2020 ZBA meeting.

**ADMINISTRATION:** With permission from Vice Chairman Nelson, BOS Representative Kessler read aloud a prepared statement from the State of New Hampshire concerning meetings to be held in accordance to the Governor's Executive Order # 12 (Attachment #1). Mr. John Lunn (NCTV) gave the phone number, meeting identification number and password to individuals who wanted to join in the meeting via zoom. Mr. Kessler stated that all Board votes per Governor's Executive Order #12 would be roll call votes.

**MINUTES:** none

Vice Chairman Nelson opened the meeting, stated there was a quorum and conducted a roll call of members present.

**NEW BUSINESS:**

**Case #1091: Jeff, Martha Lewellyn (Owner):** requests a Special Exception from the terms of Article 2, Section 206.2 of the Zoning Ordinance to permit an accessory dwelling unit in R Zone. The property is identified as Map 239 Lot 016 and is located on 90 Cutts Road in the Rural (R), Zoning District.

Vice Chairman Nelson opened the public hearing.

On a motion by Mr. Kessler, seconded by Mr. Beard; *the ZBA voted by roll call vote to continue Case # 1091 to the June 18, 2020 meeting. The motion passed 4-0-0.*

**Case #1092: WILLEY, RANDY N & CHERYL L (Owner):** request a Variance from the terms of Article 2 Section 207 of the Zoning Ordinance to permit a hair salon R-1 Zone. The property is identified

as Map 109 Lot 081 and is located on 212 North Main Street in the Single-Family Residential (R-1) Zoning District.

Vice Chairman Nelson opened the public hearing.

On a motion by Mr. Kessler, seconded by Mr. Beard; *the ZBA voted by roll call vote to continue Case # 1092 to the June 18, 2020 meeting. The motion passed 4-0-0.*

**Case #1093: Gervais, Bonnie (Owner):** request a Variance to the terms of Article 2, Section 207.1 of the Zoning Ordinance to permit Daycare Facility in an R-1 Zone. The property is identified as Map 111 Lot 236 and is located on 43 Pinnacle Road in the Residential (R-1) Zoning District.

Vice Chairman Nelson acknowledged the applicant and explained the ZBA format to her. He asked her to introduce herself and to present her case. Ms. Gervais read her application into the record.

Ms. Gervais asked for a correction to the posted and noticed Case description. It had been incorrectly noticed to the ZBA and abutters as a Daycare Facility. She stated that a Facility is a commercial entity; she was proposing a private family daycare home setting. She requested that the documents be changed to state a proposed family daycare home setting.

Ms. Donovan stated she had made an error. She had corrected the wording on Ms. Gervais' form, the worksheet and the agenda to state family daycare home.

Vice Chairman Nelson asked the Board if they had questions.

Mr. Beard asked Ms. Gervais for the maximum number of children she could care for. Ms. Gervais told him that NH state licensing allowed six children. Because her granddaughter lived with her she was able to care for five children.

Mr. Kessler read aloud the licensing requirements in the zoning ordinance. He addressed Ms. Gervais and discussed the age range of children (school age) she would care for. Ms. Gervais confirmed that state licensing allowed for her to care for some school age children in addition to the six preschool children she was planning on. She said she was not interested in doing this due to the size of her house.

When asked again, she stated she was interested in taking care of preschool children and infants. Ms. Gervais explained her experience in working in commercial day care facilities and reiterated she wanted a smaller setting.

Mr. Kessler asked what state requirements she needed to follow to be licensed to run a daycare. He was told she needed a fenced in play area. Technically she could watch three children in her home without a license.

Mr. Beard asked who inspects the home for licensure. She explained a state inspectors and the local fire chief as two inspectors. Ms. Saccento asked for a repeat of the answer. She was told that the state sets all requirements before granting a license.

Vice Chairman Nelson opened the meeting to the abutters present. He began to read a letter from abutters Greg and Ann Stout.

Ms. Gervais interrupted Vice Chairman Nelson and asked him to repeat the names of the abutters on the letter. He told her Greg and Ann Stout. She contested them as abutters.

Chairman Saccento asked if they had been notified. Ms. Donovan explained to Ms. Gervais that an abutter was not just someone whose property touches hers, they were within 100' of Ms. Gervais house.

Ms. Gervais stated she had had abutters noticed in the past and there were six of them (plus her). Ms. Donovan stated that the Stouts were within 100' of Ms. Donovan's house and were therefore abutters.

Chairman Saccento stated the question was whether they were a noticed abutter. Ms. Donovan stated they were within 100' and they were a noticed abutter. There was a discussion between the applicant and Vice Chairman Nelson. Chairman Saccento addressed Vice Chairman Nelson and asked again if the Stouts were a noticed abutter. He replied that Ms. Donovan stated they were. Ms. Donovan stated emphatically to Ms. Gervais and to the ZBA that Mr. and Mrs. Stout were abutters.

Ms. Gervais restated that the Stouts were not one of the seven abutters who were notified by certified mail. She stated she had paid for notification of seven abutters. Ms. Donovan stated she decided who was an abutter. Vice Chairman Nelson asked Ms. Donovan if the applicant had received a list of the abutters notified. The applicant stated she had not. Previously, when she had come before the ZBA, seven abutters had been noticed and she had received the list. She hadn't received a list from the Zoning Office this time. Ms. Donovan stated that anyone could request a list of the abutters.

Ms. Gervais reiterated there were only seven abutters for her previous case before the ZBA. Ms. Saccento asked for that date. Ms. Gervais stated 2015. She had the list with her at the May 28, 2020 meeting.

Ms. Donovan stated anyone could comment on the case. Ms. Saccento corrected her and stated that only abutters could; it was up to the Chairman as to whether other citizens could comment.

Vice Chairman Nelson stated the Stouts lived on Pinnacle Road. Vice Chairman Nelson stated he was admitting the letter against granting the variance and read it aloud into the record.

Abutter Mrs. Maureen Marcotte addressed Vice Chairman Nelson and stated she had a petition that people had signed in opposition to the opening of a daycare in the residential area. She requested that the petition be added to the record. Vice Chairman Nelson accepted the petition, read it into the record, and noted there were seventeen names.

Ms. Saccento asked if the petitioners lived on Pinnacle Road or the general area. She was told the petitioners lived on Pinnacle Road, Sargent Lane, Summit Road and Columbus Circle.

A gentleman spoke against the opening of the daycare on Pinnacle Road. There were many issues that needed to be addressed, including:

1. The safety issue. He stated it was a residential area with children playing and individuals walking.
2. Traffic would be increased.
3. The variance carries with the property. What assurance do the neighbors have that someone in the future will not be as responsible as the applicant?
4. What type of signage would there be?
5. Taxes were high. What will the establishment of the daycare do to the value of the abutting properties?
6. Zoning is in place to protect the residents.

Abutter Mr. Tony Zullo addressed the Vice Chair and stated he owned five houses on Columbus Circle. He stated that the neighborhood was not conducive to the proposed facility. He reiterated others concerns:

- 1) Traffic; whether the times are staggered or not.
- 2) He believed the ZBA would be opening a Pandora's Box. He cited how granting zoning variances have changed other neighborhoods.
- 3) Landlords in Town would be willing to work with the applicant to fill their vacant units.

Mr. Zullo wished her well, but stated it was not what the surrounding neighbors wanted on Pinnacle Road. He thanked the Vice Chair for allowing him to speak.

Ms. Gervais addressed Vice Chairman Nelson and stated that in 2015 she came and requested a similar variance. She withdrew her application because there was so much opposition to it. Currently she is caring for her granddaughter. When she bought the house she was not informed she could not run a day-care at the location. She stressed that it would not be a daycare facility, it would be day care in a home environment; there would only be five additional children because her granddaughter lives with her.

Continuing, she said daycare cannot be conducted in many places in town; zoning does not allow it and there is no place for a fenced-in play area. Ms. Gervais reiterated that she was not informed she could not provide day care on Pinnacle Road. She rebutted each of the concerns of the abutters and neighbors.

Ms. Saccento addressed Vice Chairman Nelson and clarified that if a granted variance is not used within one year it expired. The variance remained with the land only if it was in continuous use as a daycare. Also, any new owner would need to be approved by the State to run a daycare in that home. The State requires that the new applicant go before the ZBA for approval. Ms. Gervais agreed with Ms. Saccento.

Abutters repeated their concerns.

There being no further questions or concerns from the public, Vice Chairman Nelson opened the questioning to the Board.

Ms. Saccento asked Ms. Gervais to repeat the proposed days (she heard Monday-Friday) and hours of operation. Vice Chairman Nelson stated 6 a.m. to 6 p.m.

Ms. Saccento stated she had driven by the neighborhood. She asked the applicant and the abutters to explain the increased traffic and where the parking in the road was. Ms. Saccento was told that a truck was always parked on the street in front of Ms. Gervais' home. It creates a narrow one lane road. It was difficult for the Town plows during the winter.

Ms. Saccento addressed Ms. Gervais and asked for clarification about the need for licensing if she cared for three or less children. She was told she can watch three children in a home without a license. Mr. Kessler added that it had to be approved. Ms. Gervais concurred.

The zoning board members discussed the case. Mr. Kessler stated that if a church or professional building were going in at the location, the Board wouldn't be having this discussion. Mr. Kessler stated he believed there were some conditions that could be put on a granted variance such as parking and drop off would be limited to the driveway.

There being no further questions from the Board members, Vice Chairman Nelson closed the meeting to the public. On a motion by Mr. Kessler, seconded by Mr. Beard; ***the Board voted by roll call vote to go into Deliberations. The motion passed 4-0-0.***

There was a general discussion among the Board concerning the site, traffic, condition of road in the winter, noise, potential conditions to the variance and the other allowances by the zoning ordinances. Ms. Saccento asked if anyone had spoken to the Town (Highway Department) about Pinnacle Road. She was told no. Ms. Donovan concurred, stating she had not requested an opinion from the Public Works Department concerning Pinnacle Road.

**Variance Statement of Reasons and Discussion**

Vice Chairman Nelson asked for motions on questions one through five.

On a motion by Mr. Kessler, seconded by Mr. Beard; that:

***Granting the variance would not be contrary to the public interest because: other uses of the property in that Zone would create more traffic and daycare is a need for the community.*** There was no discussion by the Board.

An abutter located against the back of the Gervais lot stated there was a steep drop-off. He asked how children's safety would be ensured and about liability. It was the reason he had voiced his opposition to the proposed 2015 variance. He requested that the Board consider how she would fence her yard in. Vice Chairman Nelson called for a roll call vote. ***The motion passed 4-0-0.***

On a motion by Mr. Beard, seconded by Ms. Saccento; that:

***The spirit of the ordinance would be observed because by the statute one could open a church or a school.*** Vice Chairman Nelson called for a roll call vote. ***The motion passed 3-1-0 (Nelson voted no).***

On a motion by Mr. Beard, seconded by Mr. Kessler; that:

***Granting the variance would do substantial justice because it will give families more options for childcare and it will not drastically change the community setting.*** Vice Chairman Nelson called for a roll call vote. ***The motion passed 4-0-0.***

On a motion by Mr. Beard, seconded by Mr. Kessler; that:

***The values of the surrounding properties would not be diminished because it will not be a commercial facility; there will be a maximum number of six children.*** In discussion, Ms. Saccento said a prospective buyer in the neighborhood won't know it is there because there won't be a sign. After discussion, Mr. Beard added: ***The character of the neighborhood will not be changed.*** Vice Chairman Nelson called for a roll call vote. ***The motion passed 4-0-0.***

Unnecessary hardship

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:

Mr. Kessler made a motion:

***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 there are other uses that would create a greater burden on traffic than childcare***

AND:

***That the proposed use is a reasonable one because it provides a service to the community and has minimal impact.*** It was seconded by Ms. Saccento.

In discussion, Ms. Saccento stated that the purpose of the ordinance was to keep businesses out of residential areas if they are zoned (R-1). Applying that to this case, she did not see it as a business. She also did not see where this creates an issue similar to other uses that are allowed through a variance.

Vice Chairman Nelson stated the Board had not asked if Ms. Gervais was going to be the only provider. She stated she was (the only provider). Vice Chairman Nelson stated the abutters had identified their concerns which the ZBA could address with conditions to the variance.

Vice Chairman Nelson called for a roll call vote. ***The motion passed 4-0-0.***

The Board discussed conditions to add to the motion: 1. No off-street parking (customers), 2. No drop-off in the street (it is a narrow road). 3. A (stockade) fence or non-see-through fence. Ms. Saccento asked if the daycare was required to have their fence a specific height for the state (it had not been asked by the ZBA). 4. All that is regulated by the state.

Vice Chairman Nelson called for a motion to memorialize the decision of the ZBA to grant the variance. On a motion by Mr. Kessler, seconded by Mr. Beard; ***the Board voted to grant a Variance for Case #1093 with the following conditions:***

- 1) ***All drop-off and pick-up of children be done in the driveway***
- 2) ***The fence bordering the properties on Columbus Circle be in such a design it is non-see-through (privacy)***

In discussion, Ms. Saccento stated that the state decided how many children could be cared for. She asked if the ZBA members were sure they were limiting it to the type of daycare we want here. Mr. Kessler stated Newport has limits in its zoning ordinance. Mr. Beard stated she does not have the square footage to allow more children (than currently specified).

Ms. Donovan said that the variance is zoned for: to permit family daycare home. Vice Chairman Nelson addressed Ms. Donovan to clarify that six children is the maximum to care for. Ms. Donovan recited from the ordinance.

Vice Chairman Nelson called for a roll call vote. ***The motion passed 4-0-0.***

Ms. Donovan discussed the case with Ms. Gervais.

Vice Chairman Nelson addressed Ms. Gervais and explained that the abutters had thirty days to appeal the decision of the Zoning Board. He advised her not to go and spend a lot of money until the thirty days are up.

He explained to Ms. Saccento and abutters that they would have to send any appeal to the zoning board (within 30 days). The Board would hear the appeal. If the Board denied their appeal, the abutters could take it to court. Ms. Saccento clarified that if the case went to court, it would have to be found that the Zoning Board did something illegal.

**Case #1094: Don Chabot (Agent):** requests a Variance from the terms of Article 2, Section 211 of the Zoning Ordinance to permit building a Dog Kennel. The property is identified as Map 102 Lot 016 and is located on 429 Sunapee Street in the Industrial (I) Zoning District.

Vice Chairman Nelson acknowledged the agents and applicants who were attending the meeting via ZOOM. He asked them to introduce themselves. Mr. Don Chabot, Town and Country Realty, agent; Todd Russell, Town and Country Realty; Sandra Radford, potential business owner of the dog kennel;

Tim Radford, husband and staff. The ZBA members noted that the building site had gone before the ZBA several times for several different stores and a church.

He then asked the applicants and agents to present the case. Mrs. Sandra Radford stated she was looking to do a dog training facility, day school and board and train in the building. She explained: During day, instead of day care she would do a structured school for the dogs. She would also provide private training 1:1 with the dog and owner; or dog and instructor.

Mr. Tim Radford explained Mrs. Radford's credentials and a more detailed plan to the Board (information was in their packets). He stated that:

- ❖ Hours of operation were 7 am-6 pm Monday-Friday, Saturdays 9 am-5 pm, and Sunday by appointment only. Private lessons would be offered 2 nights a week from 6-8 pm.
- ❖ Mrs. Radford would do indoor and outdoor training; there was a lot of parking on the side of the building.
- ❖ Waste removal: they would use waste bags.
- ❖ The back will be fenced in. It will be totally Covid-19 compliant; people will drop off dogs in a crate, owners and staff will obey social distancing and after owner leaves the staff will get the dog from the crate. Mr. Radford explained the structured day for the Zoning Board members.

Mr. Radford stated he grew up in Newport on Sand Hill Road, graduated from Newport High School in 1985. They were local entrepreneurs.

Vice Chairman Nelson asked about abutters from the trailer park. Ms. Donovan stated that if abutters were 100' away from the building; they were noticed. Eighteen notices went out (to abutters). Vice Chairman Nelson asked, for clarification, if renters got noticed. He was told no, only owners of the trailers received a notice. There was a discussion as to whether the occupants were renters or owners.

Vice Chairman Nelson stated there were no abutters present.

Vice Chairman Nelson asked the applicant where the waste went. Mr. Radford stated it might be removed from the site daily to another property they own, or they might get a dumpster at the kennel location.

Ms. Saccento addressed the applicants and stated the ZBA has had discussions about the parking in the front due to DOT access. She asked where the clients were going to park.

She asked about the dogs being leashed in the facility. She was told they would be.

Ms. Saccento asked about the fencing for the yard. She was told it will be 6 foot tall stockade fencing. For clarification, Ms. Saccento asked if staff would be staying with any dog(s) overnight. She was told yes.

Vice Chairman Nelson asked, for clarification, that overnights would be inside the building. He was told yes.

Vice Chairman Nelson addressed Board members and stated that for the second hand store (same building) the ZBA had stipulated specific fencing. Did the Board want to do that? Ms. Saccento said the store wanted outside display space. Vice Chairman Nelson reminded them of the 30' setback to the highway; there was a lot of space along the highway.

Vice Chairman Nelson addressed the applicants and Board and stated that it was a lot safer if clients could come and go from one spot. Mr. Chabot stated the applicants had no problem using the side; they want

what is safest for the pets. All dogs will be leashed in and out. It will be set up so there is no parking along the front of the building.

Ms. Saccento asked if the applicants are planning to use only one of the two doors, or both. Mrs. Radford stated that they had planned on using the front door to enter and exit. The second door was for fire safety. The back door was to go out to defecate.

Ms. Saccento addressed the agent and stated that the current fence on the property is in disrepair. She asked if it would be repaired so clients would know not to park in the trailer park parking area. Mr. Chobat stated he believed the trailer park put the fence up.

Mr. Radford stated they would instruct the owners where to park. They would also put up signage.

Ms. Saccento asked if there would be employees. She was told Mrs. and Mr. Radford.

Vice Chairman Nelson reiterated to the applicants that they delineate their parking for their customers.

Vice Chairman Nelson stated again there were no abutters present.

There being no further questions from the Board members, Vice Chairman Nelson closed the meeting to the public. On a motion by Mr. Kessler, seconded by Mr. Beard; ***the Board voted by roll call to go into Deliberations. The motion passed 4-0-0.***

#### **Variance Statement of Reasons and Discussion**

Vice Chairman Nelson asked for motions on questions one through five.

On a motion by Mr. Kessler, seconded by Ms. Saccento; that:

***Granting the variance would not be contrary to the public interest because: the property is located in the Industrial (I) Zoning District.*** Vice Chairman Nelson called for a roll call vote. ***The motion passed 4-0-0.***

On a motion by Ms. Saccento, seconded by Mr. Kessler; that:

***The spirit of the ordinance would be observed because it is in an Industrial (I) Zone and there are many more uses that are much louder in the neighborhood.*** Vice Chairman Nelson called for a roll call vote. ***The motion passed 4-0-0.***

On a motion by Mr. Kessler, seconded by Mr. Beard; that:

***Granting the variance would do substantial justice because it would allow the property to be used for a community need in the Industrial (I) Zone.*** Vice Chairman Nelson called for a roll call vote. ***The motion passed 4-0-0.***

On a motion by Mr. Beard, seconded by Mr. Kessler; that:

***The values of the surrounding properties would not be diminished because the proposed kennel is surrounded by an Industrial (I) Zone and surrounded by businesses.*** Vice Chairman Nelson called for a roll call vote. ***The motion passed 4-0-0.***

Unnecessary hardship

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:

On a motion by Ms. Saccento, Mr. Beard, seconded by;

*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 this use would not be contrary to what would normally be allowed in an Industrial (I) Zone*

AND:

*That the proposed use is a reasonable one because this business will be a good use of a vacant building in an industrial area that is quite noisy already and the neighbors do not seem concerned enough about it to come to the meeting to speak with us.*

Vice Chairman Nelson called for a roll call vote. *The motion passed 4-0-0.*

Vice Chairman Nelson called for a motion to memorialize the decision of the ZBA to grant the variance. On a motion by Mr. Kessler, seconded by Mr. Beard; *the Board voted to grant a Variance for Case #1094 as presented.* Chairman Nelson called for a roll call vote. *The motion passed 4-0-0.*

Mr. Chabot and the Radfords thanked the Zoning Board members for their time.

Vice Chairman Nelson congratulated the Radfords and stated their Notice of Decision would be sent in the mail in five business days. Ms. Saccento wished them luck.

On a motion by Mr. Kessler, seconded by Mr. Beard; *the Board voted to adjourn at 8:44 p.m. The motion passed 4-0-0.*

Respectfully submitted,

Maura Stetson  
Scribe

Attachment #1

Approved June XX, 2020