

**Zoning Board of Adjustment**  
**April 27, 2017 6:30 PM**  
**Board of Selectmen's Room/Municipal Building**  
**15 Sunapee Street/Newport, NH**

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**PRESENT:** Ben Nelson, Chairman; Melissa Saccento, Vice Chairman; Jeffrey Kessler, BOS Representative; Beth Cassorla

**ABSENT MEMBERS:** Tim Beard, Alternate; Virginia Irwin, Alternate; Scott McCoy, Alternate; David Lain

**VIDEOGRAPHER:** Louis Cassorla, NCTV

**STAFF PRESENT:** Julie M. Magnuson, Planning & Zoning Administrator

**COMMUNITY MEMBERS PRESENT:** Wayne Boardman (abutter)

**CALL TO ORDER:** Chairman Nelson called the meeting of the ZBA to order at 6:30 p.m. and introduced the sitting Board members.

**ADMINISTRATION:** none

**MINUTES:** March 23, 2017

March 23, 2017

On a motion by Mr. Kessler; seconded by Mrs. Cassorla; *the Board voted to approve the minutes of the March 23, 2017 meeting as presented. The motion passed 4-0-0.*

**NEW BUSINESS**

**Case #1047: Advantage Revocable Trust, Donald M. Gobin, Trustee (Owner) and Noise--R-Us Fireworks, Shannon K. MacMichael, President (Agent):** request a Variance to the terms of Article II, Section 207.1 of the Zoning Ordinance to permit no more than five (5) commercial storage containers on the premises of 208 John Stark Highway. The property is identified as Map 240 Lot 001 and located at 208 John Stark Highway in the Single Family (R-1) Zoning District.

Chairman Nelson opened the public hearing and acknowledged Ms. Magnuson. Ms. Magnuson read the Administrative Review into the record. She indicated two possible conditions for approval: 1. That the containers not be visible from the road and 2. That if the applicant purchases the property and merges the two lots (Lots 021 and 001) that the containers be removed once a new storage facility is built.

Chairman Nelson explained the ZBA format to the abutter and applicant.

Ms. Shannon MacMichael, owner of Noise-R-Us Fireworks at 206 John Stark Highway, and renter of the abutting property 208 John Stark Highway; explained what she wanted to do. She stressed that part of her argument for allowing the storage containers was that the Residential Zoning for the area was outdated (the speed limit was 50 mph and the store was surrounded by several commercial businesses).

Chairman Nelson asked where the placement of the new storage containers would be. Ms. MacMichael explained. He then asked about the one currently at 206 John Stark Highway. Ms. MacMichael stated that it had been there since 2003 when her father opened the store. Mr. Wayne Boardman explained to the Chair that the proposed containers would be placed on property abutting "Newport Heights Road", near ledges. Chairman Nelson thanked him for the clarification.

Ms. Magnuson addressed the Chair and using the maps in their packets, explained the location.

Ms. MacMichael then read her application into the record.

Chairman Nelson addressed the Board and asked if there were any questions. There were none.

Chairman Nelson addressed the abutter present and asked if he had comments or concerns.

Mr. Wayne Boardman, abutter, addressed the Chair and stated that he owned B & B Campers. He was “all for it” (the variance). He was at the meeting to support Ms. MacMichael. They had a good working relationship between them. He had been involved with meetings with the Fire Chief and Stated Fire Marshal. His only concern was that it didn’t bother his property. The proposed plan wouldn’t. He explained the history of the building and store and its being up to code and fire protection. His insurance had no problem with it.

Chairman Nelson thanked Mr. Boardman.

Chairman Nelson addressed the public and asked if there were further questions. There were none.

Chairman Nelson acknowledged Ms. Magnuson. Ms. Magnuson addressed the Chair and stated that the map in their packet showed how small the store lot (021) was. There was no room to put the storage containers on Lot 021.

There was a short discussion on the Zoning in the area of the store. Ms. Magnuson stated that next year the Planning Board should look at changing the Zoning to Industrial in that area

Chairman Nelson closed the meeting to the public. On a motion by Mrs. Cassorla, seconded by Ms. Saccento; ***the Board voted to go into Deliberations. The motion passed 4-0-0.***

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

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: it would be keeping with the nature of the surrounding properties. The motion passed 4-0-0.*** Chairman Nelson asked for discussion. Mrs. Cassorla stated that since Ms. MacMichael was currently renting the abutting property and has plans to merge the two lots together lends itself to not being contrary to the public interest. Chairman Nelson stated that the Lot was called a creeper.

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

***The spirit of the ordinance would be observed because the surrounding properties are commercial and it would be in keeping with the neighborhood.*** Chairman Nelson asked for discussion. There was none. Chairman Nelson called for a vote. ***The motion passed 4-0-0.***

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

***Granting the variance would do substantial justice because it was keeping with the character of the neighborhood as well as the containers would not be visible from the road.*** The Chair asked for discussion. The Chair asked if the current container would be moved out of sight. The applicant stated she would if so directed. After a short discussion by the Board, Chairman Nelson stated that as long as the others were out of sight that “grandfathered” one could stay. It was stated that the fire code should be

observed as to the current container's placement. Chairman Nelson called for a vote. ***The motion passed 4-0-0.***

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

***The values of the surrounding properties would not be diminished because the Variance would be in keeping with the property as it has been all along.*** There was no discussion. Chairman Nelson called for a 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 from Mrs. Cassorla, seconded by Ms. Saccento; ***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 surrounding properties are all commercial and is keeping with the spirit of the ordinance***

AND:

***that the proposed use is a reasonable one because it would allow the business owner to conduct business in a more efficient way.*** In discussion, Chairman Nelson stated it would be a safer way, too. Mr. Kessler stated the proposed use would be a reasonable one because it safely keeps the material out of the way. Mrs. Cassorla concurred, stating it was (by using the abutting property for storage) keeping it off-site. The Chair then called for a vote. ***The motion passed 4-0-0.***

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 #1047 with the following conditions:***

- 1. That there be no more than five (5) storage containers be stored at any one time and in accordance with State Fire Regulations.***
- 2. That the new storage containers are not visible from John Stark Highway.*** It was seconded by Ms. Saccento.

Ms. MacMichael asked if the current container (on property for 14 years) needed to be out of sight. It was the consensus of the Board that it could remain where it was.

It was also the consensus of the Board that only four (4) additional trailers would be allowed (current one would be considered one of the five permitted). Chairman Nelson called for a vote. ***The motion passed 4-0-0.***

Ms. MacMichael thanked the Board. The Board members congratulated Ms. MacMichael and wished her luck.

On a motion by Mrs. Cassorla, seconded by Mr. Kessler; the Board adjourned at 6:54 p.m. ***The motion passed 4-0-0.***

Respectfully submitted,

Maura Stetson  
Scribe  
Approved May 25, 2017