

**Zoning Board of Adjustment
August 19, 2021 6:30 PM
Board of Selectmen's Room/Municipal Building
15 Sunapee Street/Newport, NH**

Remote Access:

Zoom.com - Meeting ID: 876 3450 7050 **Password:** 418786
+1 (929)-205-6099 US (audio only, long-distance fees may apply)

PRESENT BOS ROOM: Ben Nelson, Acting Chairman Nelson; Jeffrey Kessler, BOS Representative; Bert Spaulding, Sr.; Christopher Whalen

ABSENT MEMBERS: Scott McCoy, alternate; Tim Beard

VIDEOGRAPHER: John Lunn, NCTV

STAFF PRESENT: Christina Donovan, Zoning Administrator

APPLICANTS PRESENT via ZOOM: David Prescott

ABUTTERS PRESENT: Mr. and Mrs. Kevin Ripley

CALL TO ORDER: Acting Chairman Nelson called the meeting to order at 6:35 p.m. followed by a roll call.

ADMINISTRATION: Ms. Donovan addressed the Chairman and stated that she had brought the ZBA's request to the Planning Board asking them to review the rear setback ordinance in the R2 District (the action is in the Planning Board's purview). The Planning Board wanted the ZBA's request in writing. After a discussion on the topic, Acting Chairman Nelson called for a motion that the ZBA ask the Planning Board to look into reducing the rear setback within the R2 District. Ms. Donovan stated that she could write the request on behalf of the ZBA; do an analysis of how many homes were affected in the R2 Zone and also list the setback requirements in the other Zones for comparison. The Board agreed to her suggestion.

Mr. Spaulding, Sr. stated there were applicants waiting for their cases; he asked that the minutes be moved until after the Continued Business. On a motion by Mr. Spaulding, Sr.; seconded by Mr. Whalen; ***the ZBA voted to move the minutes until after the Cases were heard. The motion passed 4-0-0.***

NEW BUSINESS:

Case # 1115-Connor Howe (owner): Request a Variance as provided for in Article III, Section 307 of the zoning ordinance to permit a Tiny House. The property is identified as Map 231 Lot 018 and located at 309 Maple Street in the Rural (R) Zoning District.

Acting Chairman Nelson opened the public hearing. He reviewed the ZBA format for the applicants and public in attendance. Mr. Howe was not in attendance at the meeting. Ms. Donovan requested the ZBA continue Case #1115 to September 16, 2021 at 6:30 p.m.

Mr. Kessler made a motion ***to move Case #1115 to the end of the agenda.*** It was seconded by Mr. Whalen. ***The motion passed 4-0-0.*** Acting Chairman Nelson said if the applicant did not show by the end of the meeting they would table Case #1115 to the next meeting.

Case #1116- Katie Burns (owner) Clayton Gilbert (Agent): Request a Special Exception as provided for Article IV, Section 419 of the zoning ordinance to permit an Accessory Dwelling Unit. The property is identified as Map 219 Lot 031 and located at 318 Corbin Road in the Rural (R) Zoning District.

Acting Chairman Nelson opened the public hearing. Acting Chairman Nelson acknowledged Mr. Gilbert. He asked him to tell the ZBA what he was planning to do. Mr. Gilbert stated that he was representing Ms. Katie Burns. A new home is being constructed at 318 Corbin Road. Their proposal is to put an accessory unit (ADU) above the garage. The architect followed all requirements in Newport's ordinance for an ADU. The ADU is self-contained, but attached to the main housing unit.

Acting Chairman Nelson opened the hearing to the public. There were no comments for against the proposal.

Mr. Ripley asked for the procedure of Case #1115. Acting Chairman Nelson explained the ZBA process to him. Mr. Ripley thanked the Chair.

Acting Chairman Nelson asked if there were questions from Board members. Members asked: Was it a new structure? They were told yes. The new structure's exterior will be 93% the same as the original one.

The ADU is part of the plans for the new structure. They were told yes.

After confirming that the old structure is now removed, Mr. Gilbert was asked, for clarification where the apartment would be located.

Mr. Spaulding, Sr. asked Mr. Gilbert if he had reviewed the criteria for an ADU. Mr. Gilbert said he has, the architect has and they have confirmed that it meets all the requirements.

Mr. Kessler addressed Mr. Spaulding, Sr. and reminded him of the purview of the ZBA.

Ms. Donovan addressed the Board and stated Newport had strict regulations for ADUs (Section 419). She had gone over them extensively with Mr. Gilbert and Ms. Burns to ensure they met them. The house and ADU will be inspected for fire and safety requirements.

Board members asked about size, separate egress/ingress, garage was sealed off from ADU and main building and an interior door (accessed the garage and gave the ability to go into the main house).

Mr. Spaulding, Sr. then read aloud Section 419.1 and 419.2. He asked Mr. Gilbert to answer each provision. He asked if there was a leach field or Town sewer. Mr. Gilbert stated there was a leach field and it was large enough to accommodate three bedrooms. Currently there are three bedrooms listed on the (architectural) plans. Mr. Spaulding, Sr. asked that Mr. Gilbert provide a document stating the leach field capacity. Mr. Gilbert stated he could make it available to the ZBA. Acting Chairman Nelson stated the ZBA could make their motion with the requested condition.

Mr. Spaulding, Sr. reviewed the ADU floor plan the Board had been provided. Mr. Spaulding, Sr. asked when the septic system was approved by the NH Department of Environmental Services. Mr. Gilbert did not have the date.

Mr. Whalen asked if the septic system was inspected. Mr. Gilbert said yes and gave the name of the company who had performed the inspection.

Ms. Donovan informed the Board that if the septic failed they would not get a Certificate of Occupancy (CO). Septic systems are held at a state level approval. Mr. Gilbert added that it had to be sized correctly in order to get the approval. Mr. Kessler stated the septic system was not in the ZBA purview. Mr. Spaulding, Sr. agreed.

Mr. Spaulding, Sr. moved that the ZBA table Case #1116 until they have notification of what DES has to say. Board members disagreed with the motion. Acting Chairman Nelson asked if the ZBA approve subject to DES signing off on the septic system size (if it would meet the Board's approval). There was a discussion of the need for the condition in the motion and that that it was out of the ZBA purview. The Board was told that the DES has all septic system plans on file. Ms. Donovan could call them for the size and capacity. There was further discussion on state and local regulations for septic systems.

Part B.

Mr. Spaulding, Sr. made a motion *to approve Case #1116 contingent on a DES document stating the capacity (3 bedrooms) of this septic system with copies to be supplied to the Board.* There was a discussion on the motion. Mr. Gilbert stated he had the document from the company that inspected the septic system on March 12, 2021. The company couldn't do an inspection report without being licensed by the state. Mr. Whalen agreed with Mr. Gilbert's explanation of the inspection. Mr. Whalen then asked, for clarification, that with Mr. Spaulding, Sr.'s motion, the applicant did not have to go back to the Board for another hearing. When it was confirmed that the applicant did not, he seconded the motion. ***The motion passed 4-0-0.***

Mr. Kessler and Acting Chairman Nelson explained to the two Board members that the ZBA needed to answer all questions for a Special Exception before approving the Case. Acting Chairman Nelson stated that the ZBA would identify the two parts A and B.

Part A.

Zoning Board of Adjustment Special Exception

Acting Chairman Nelson asked for a motion and vote on each Standard.

Standard A

Mr. Kessler made a motion that: ***The proposed use will not be detrimental to the overall character of the neighborhood by reason of undue variation from the nature of other uses in the vicinity including design, scale, noise and odor based upon the acceptance of the septic system. Standard A has been met.*** The motion was seconded by Acting Chairman Nelson. He called for a vote. ***The motion passed 4-0-0.***

Standard B

Mr. Kessler made a motion that: ***The proposed use will not be injurious, noxious or offensive or in any way detrimental to the neighborhood with acceptable sewer system. Standard B has been met.*** The motion was seconded by Acting Chairman Nelson. He called for a vote. ***The motion passed 4-0-0.***

Standard C

Mr. Kessler made the motion that: ***The proposed use will not be contrary to the public health, safety and general welfare by reason of undue traffic congestion or hazards that pose a risk to life and property or be unsanitary or create unhealthful waste disposal or unhealthful conditions upon acceptable sewer certificate. Standard C has been met.*** It was seconded by Acting Chairman Nelson. He called for a vote. ***The motion passed 3-0-0.***

Acting Chairman Nelson said the motion on a collective Standard A, B and C for Case #1116 had already been stated in Part B (above).

CONTINUED BUSINESS:

Case #1105: Yoshi (Owner) David Prescott (Agent): Request a Variance as provided for in Article II, Section 209.3 to reduce the rear setback requirement. The property is identified as Map 109 Lot 074 and located at 192 North Main Street in the Light Commercial (B1) Zoning District.

Ms. Donovan stated that Mr. Prescott was in attendance via zoom to answer any questions from the Board. Acting Chairman Nelson opened the public hearing. After a brief discussion on the case, on a motion by Mr. Kessler, seconded by Mr. Whalen; ***the Board voted to go back into Deliberations. The motion passed 4-0-0.***

Variance Statement of Reasons and Discussion

Acting Chairman Nelson asked for motions on prongs one through five.

On a motion by Mr. Spaulding, Sr., seconded by Mr. Kessler; that:
Granting the variance would not be contrary to the public interest. Mr. Kessler explained to Mr. Spaulding, Sr. that the prongs were answered as motions to show how and why the Board voted their way. There was no discussion by the Board. Acting Chairman Nelson called for a vote. ***The motion passed 4-0-0.***

Mr. Spaulding, Sr. read aloud prong two. He expressed his concerns.
Mr. Kessler made a motion that: ***The spirit of the ordinance would be observed because sufficient space remained with the removal of the trailer to meet the safety concerns of the fire chief and it will improve safety of the employees because they will not be traveling outside in bad or icy conditions to restock from the trailer.*** Mr. Whalen said that according to the fire chief's letter there would be more room with the trailer gone. He asked if there were concerns from the abutters. Mr. Kessler said the abutters did not attend the prior meeting; they had an opportunity to come and comment. There was a discussion among Board members on the area and trailer. It was seconded by Mr. Whalen. Acting Chairman Nelson called for a vote. ***The motion passed 3-1-0 (Spaulding, no).***

On a motion by Mr. Kessler, seconded by Mr. Spaulding, Sr.; that:
Granting the variance would do substantial justice because it allows the property owner to utilize their property in a more efficient manner. In discussion, Mr. Spaulding, Sr. stated it would (allow the owner to utilize their property efficiently). Acting Chairman Nelson called for a vote. ***The motion passed 4-0-0.***

On a motion by Mr. Kessler, seconded by Mr. Spaulding, Sr. that:
The values of the surrounding properties would not be diminished because the trailer will be gone. In discussion, there was a lengthy discussion that the back of the building be aesthetically appealing and sided. Mr. Kessler stated the ZBA could not dictate what the applicant used for a building material. He said he believed it was under Building Codes. Ms. Donovan agreed, especially because the property is a Commercial use. Mr. Prescott stated that he would be covering the back with white vinyl siding. Acting Chairman Nelson called for an amendment to the motion to add ***that the new back be sided.*** It was seconded by Mr. Spaulding, Sr. Acting Chairman Nelson called for a vote on the amendment. ***The motion passed 4-0-0.***

The new motion read:

On a motion by Mr. Kessler, seconded by Mr. Spaulding, Sr. that:

The values of the surrounding properties would not be diminished because the trailer will be gone and that the new back will be sided. Acting Chairman Nelson called for a vote. ***The motion passed 4-0-0.***

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 there is no room to expand for storage in any other location of the property.

AND:

A.ii. That the proposed use is a reasonable one because it allows the property owner to expand a business without compromising safety.

It was seconded by Mr. Whalen. There was no discussion. Acting Chairman Nelson called for a vote. ***The motion passed 4-0-0.***

Acting 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. Whalen; ***the Board voted to grant a Variance for Case #1105 with the condition that the addition will be sided.*** Acting Chairman Nelson called for a vote. ***The motion passed 4-0-0.***

Acting Chairman Nelson congratulated the applicant.

Case #1106: Debra Dorherty (Owner) Tiffany Doherty (Agent): Request a Special Exception as provided for in Article II, Section 206.2 to permit a Farm Produce Stand. The property is identified as Map 242 Lot 056 and located at 2 Moore Road located in the Rural (R) Zoning District.

Ms. Donovan addressed the Board and said that the applicant has requested they be continued to the September 16, 2021 ZBA meeting at 6:30 pm.

On a motion by Mr. Kessler, seconded by Mr. Spaulding, Sr.; ***the Board voted to continue Case #1106 to the September 16, 2021 ZBA meeting at 6:30 pm. The motion passed 4-0-0.***

Case # 1115-Connor Howe (owner): Request a Variance as provided for in Article III, Section 307 of the zoning ordinance to permit a Tiny House. The property is identified as Map 231 Lot 018 and located at 309 Maple Street in the Rural (R) Zoning District.

Ms. Donovan requested the ZBA continue Case #1115 to September 16, 2021 at 6:30 p.m.

Mr. Whalen made a motion ***to continue Case #1115 to September 16, 2021 at 6:30 p.m.*** It was seconded by Mr. Kessler. ***The motion passed 4-0-0.***

MINUTES: July 16, 2020; July 23, 2020; August 20, 2020; September 17, 2020; January 21, 2021; March 18, 2021; June 17, 2021; July 15, 2021; July 29, 2021

July 29, 2021

On a motion by Mr. Kessler, seconded by Mr. Spaulding, Sr.; ***the Board approved the minutes of the July 29, 2021 meeting. The motion passed 4-0-0.***

July 15, 2021

On a motion by Mr. Kessler, seconded by Mr. Spaulding, Sr.; *the Board approved the minutes of the July 15, 2021 meeting. The motion passed 4-0-0.*

July 23, 2020 August 20, 2020 March 18, 2021; June 17, 2021

Ms. Donovan will send the minutes electronically and have them available in hard copy format.

Mr. Kessler made a motion to adjourn.

Mr. Spaulding, Sr. asked the question: if a Board member finds something in their packet that is incorrect; should they bring it to Ms. Donovan's attention or wait until the ZBA meeting. There was a lengthy discussion among the Board members and Ms. Donovan on the subject. Acting Chairman Nelson stated if there is a discrepancy; bring it to Ms. Donovan's attention.

Acting Chairman Nelson asked for a motion to adjourn. Mr. Kessler made *a motion to adjourn at 8:23 p.m.* It was seconded by Mr. Whalen. *The motion passed 4-0-0.*

Respectfully submitted,

Maura Stetson, Scribe

Approved on: September XX, 2021