

**Zoning Board of Adjustment
July 15, 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: Jeffrey Kessler, BOS Representative; Bert Spaulding, Sr.; Tim Beard

ABSENT MEMBERS: Scott McCoy, alternate, Ben Nelson, Acting Chairman;

VIDEOGRAPHER: John Lunn, NCTV

STAFF PRESENT: Christina Donovan, Zoning Administrator

APPLICANTS PRESENT via ZOOM: Edward Cortez, Wayne Gutman

ABUTTERS PRESENT: Nicole and Brad Cossingham

CALL TO ORDER: Acting Chairman Nelson was not in attendance. On a motion by Mr. Spaulding, Sr., seconded by Mr. Beard; *the Board voted to have Mr. Kessler as Acting Chairman for the July 15, 2021 meeting. The motion passed 3-0-0.* Acting Chairman Kessler called the meeting to order at 6:31 p.m. followed by a roll call.

Addressing the applicants and public in attendance, Acting Chairman Kessler explained there were currently four active members of the ZBA. When three members were in attendance the applicants needed a unanimous yes vote for a variance or special exception request to be granted (Acting Chairman Kessler double checked with Ms. Donovan that this was still true). He told the applicants that because the cases (with three members sitting) would need the unanimous consent of the Board, applicants had the option to continue their case to a future time when there are four members on the Board to hear their case and decide. There are two additional Board members. Applicants could be heard July 15, 2021 (with three members), or wait for a larger Board.

There was no applicant that requested their case be heard at a future meeting with a larger Board.

ADMINISTRATION: Ms. Donovan addressed Acting Chairman Kessler and stated it was July. The Board is required to vote for a new Chairman and Vice Chairman of the ZBA. She requested they vote or vote to table voting to the next meeting. Mr. Spaulding, Sr. made a motion *to continue the voting for a Chairman and Vice Chairman of the ZBA to the August 19, 2021 meeting.* It was seconded by Mr. Beard. *The motion passed 3-0-0.*

Ms. Donovan addressed Acting Chairman Kessler and requested that Case #1111 be continued to date certain on August 19, 2021 at 6:30 p.m. Acting Chairman Kessler asked Ms. Donovan if it was the applicant's choice. She replied yes. Mr. Beard made a motion *to continue Case #1111 to August 19, 2021 at 6:30 p.m.* It was seconded by Mr. Spaulding, Sr. Mr. Spaulding, Sr. said that it had been discussed on Tuesday night (at Planning Board meeting). He said that there was a lot of information to discuss at the ZBA on the case. Acting Chairman Kessler called for a vote. *The motion passed 3-0-0.*

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
June 17, 2021

On a motion by Mr. Spaulding, Sr., seconded by Mr. Beard; *the Board voted to approve the minutes of the June 17, 2021 meeting as presented. The motion passed 3-0-0.*

July 15, 2021

On a motion by Mr. Spaulding, Sr., seconded by Mr. Beard; *the Board voted to approve the minutes of the July 15, 2021 meeting as presented. The motion passed 3-0-0.*

On a motion by Mr. Spaulding, Sr., seconded by Mr. Beard; *the Board voted to continue the rest of the minutes to the September 19, 2021 meeting. The motion passed 3-0-0.*

Acting Chairman Kessler stated there was Continued and New Business. He asked the pleasure of the Board for the order which the cases would be heard. Mr. Spaulding, Sr. asked how long the applicants from the continued business have been waiting. He was told three months.

Mr. Spaulding, Sr. made a motion *to hear the cases out of order and to hear the continued cases first.* It was seconded by Mr. Beard. *The motion passed 3-0-0.*

CONTINUED BUSINESS:

Case #1105: Yoshi (Owner) David Presocott (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.

Acting Chairman Kessler opened the public hearing and asked who was presenting the case. Mr. Jay Patel, owner of Yoshi convenience store, stated he was presenting the case. Mr. Patel explained he was proposing to reduce the setback requirements in the rear of the building where there is currently a trailer. He wants to remove the trailer and clean up the area. The addition they propose will not go further than the width of the trailer. When asked, he read his application into the record.

Using a diagram provided to the Board members, Acting Chairman Kessler asked, for clarification if the small addition will replace the old trailer that is now on the property. He was told yes. Acting Chairman Kessler said for clarification that Mr. Patel would be removing the trailer and building two “push outs” for storage. He was told yes. Continuing, Acting Chairman Kessler stated the diagram showed he would be 15 feet (one push out) and 17 feet (second push out) from the property line.

Mr. Spaulding, Sr. said that the variance has protected the abutters for years. He said the most important concern was the ability of fire apparatus to get to the back of the building. Mr. Patel said there would still be 17 feet between the building and the abutter’s fence. There will be enough room for a fire truck to go in.

Mr. Spaulding, Sr. said that when the Zoning Ordinance was created it (setback) was 25 feet. Mr. Patel agreed. Mr. Spaulding, Sr. asked what the distance to the property line was now. Mr. Patel replied 25 feet. He said that with the new proposal, the new foundation to the property line will be 17 feet at the entrance (south side) and 15 feet in the back (north side).

Mr. Spaulding, Sr. asked:

1. Why the addition could not be built on the north end of the building. He was told there were (six) condensing units there.
2. Asked for the size of the units. Mr. Patel said they were the length of the building by 8 feet.

3. Asked if a storage shed could be built on the north end of the building instead of asking for a variance. Mr. Patel's diagram showed a lot of space, although it was not to scale. Mr. Patel said that the zoning ordinance requires a certain number of parking spots for the store. Also there is the gasoline pumps and overhang that takes up room in the parking area. The gasoline area requires a certain number of parking spots as well. There is (required) parking in the location that Mr. Spaulding, Sr. is proposing.

Ms. Donovan addressed Acting Chairman Kessler and stated she had met with the agent, Mr. Prescott. Ms. Donovan stated because of the kitchen in the back, the only place for the addition to be built is in the proposed location. She conferred with Mr. Patel that her statement was correct.

Acting Chairman Kessler asked Mr. Spaulding, Sr. if he had additional questions.

Acting Chairman Kessler asked Mr. Beard if he had any questions. Mr. Beard addressed Mr. Patel and asked for clarification if the box trailer would be removed and the 44 foot addition would be built there. He was told yes. Mr. Patel was also planning a 36 foot addition on the other side. He was told yes.

Mr. Patel informed him that the reason they would not continue the addition the full length of the building was because there was a hood for the kitchen that vented out in the 20' gap.

Acting Chairman Kessler asked if there were abutters that would like to speak in favor or opposition of the proposal. There was no one.

On a motion by Mr. Beard, seconded by Mr. Spaulding, Sr.; ***the Board voted to go into Deliberations. The motion passed 3-0-0.***

Mr. Spaulding, Sr. read aloud from the Zoning Ordinance concerning required setbacks in the neighborhood. He stated the proposed variance of 17' and 15' setbacks made for an unsafe environment for the use of fire fighting vehicles. There was a discussion on whether the protocol would be to drive or drag fire hoses to the back of the building.

Board members and Mr. Spaulding, Sr. discussed the reduced setback, the improvements the applicant was proposing and whether the seventeen feet would be advantageous. Mr. Beard stated that currently there is a box trailer placed there. It does not meet the setbacks either. The owners, the Patels, want to clean up the area. He reiterated that there is already something in the space, is not in compliance. The area is not empty.

Acting Chairman Kessler asked if the Board wanted to table Case #1105 and get an opinion from the Fire Chief. Mr. Spaulding, Sr. stated he was surprised there was not a fire chief's comment in the Administrative Review. Mr. Spaulding, Sr. said the Board had to vote on the five Variance questions. His opinion was that they could not get through them (in affirmative). He said he did not know if a report from the chief would change his mind and explained why.

Mr. Spaulding, Sr. said if the applicant wanted to table the Case to the next meeting to get a report from the fire chief he would make the motion. If the Board went forward now, his opinion is that he is very concerned.

Acting Chairman Kessler asked Mr. Patel if he would like the Board to table his case until the next meeting (August 19, 2021) and get input from the fire chief. Mr. Patel said yes.

Mr. Patel addressed Acting Chairman Kessler and asked if he could add more information. The proposal was two-fold:

- 1) Safety of his employees. Currently they have to enter/exit the storage from the outside. It has created a liability in the winter months for the store in which an employee has already been out due to the hazards posed.
- 2) To beautify the property and improve the appearance of the neighborhood.

On a motion by Mr. Spaulding, Sr., seconded by Mr. Beard; ***the Board continued Case #1105 to the August 19, 2021 Zoning Board meeting at 6:30 p.m. in the Board of Selectmen's Room. The motion passed 3-0-0.***

Acting Chairman Kessler addressed Mr. Jay Patel and stated they would see him next month (August).

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.

Acting Chairman Kessler opened the public hearing and began to read aloud Case #1106. He was informed Ms. Debra Dorherty was not in attendance. On a motion by Mr. Spaulding, Sr. seconded by Mr. Beard; ***the Board voted to defer Case #1106 to the end of the meeting. The motion passed 3-0-0.***

NEW BUSINESS:

Case #1110: Jim Mullane (Owner): Request a Special Exception as provided for in Article II, Section 206B.2 for the selling of automotive vehicles. The property is identified as Map 235 Lot 032 and located at 14 Barton Whitney Road located in the Kelleyville (K) Zoning District.

Mr. Spaulding, Sr. explained he could not sit on the case. It had been brought to the Planning Board and he had recused himself then. There would not be a quorum of sitting, voting ZBA members. Clare Gardner asked if the special exception was necessary, one had been granted in 2016 by a ZBA Board of five members. Acting Chairman Kessler explained it had not been acted upon in the 12 months after it was granted. Mr. Spaulding, Sr. gave additional information. When asked, Ms. Donovan gave all options available to the Board and applicant (including waiting for another Board member to show up at the July 15th meeting). On a motion by Mr. Beard, seconded by Acting Chairman Kessler; ***the Board voted to defer Case #1110 to the end of the ZBA meeting. The motion passed 2-0-1 (Spaulding abstained).***

Ms. Donovan left to try and contact another member of the Board to have a quorum.

Case #1111: Susan Leavitt (Owner): Request a Variance as provided for in Article II, Section 206.3 of the zoning ordinance to permit road frontage of 100 linear feet. The property is identified as Map 116 Lot 029 and located at Fourth Street in the Rural (R) Zoning District.

Case #1111 continued to date certain on August 19, 2021 at 6:30 p.m. by Board members.

Case #1112: Edward Cortez (Owner) Request a Variance as provided for in Article III, Section 307.1 of the zoning ordinance to permit a Nano brewery and restaurant. The property is identified as Map 115 Lot 005 and located at 98 Elm Street in the Residential (R1) Zoning District.

Acting Chairman Kessler opened Case #1112. He acknowledged Mr. Cortez who was attending the meeting via zoom. Mr. Cortez introduced Mr. Wayne Gutman (attending via zoom) a business partner. Lastly, he introduced Mr. Jason Raddatz who was in attendance at the meeting in the BOS room. He asked, for clarification if he was to read the application and then go through the hard copy slides that had been provided in the Board packets. Acting Chairman Kessler agreed with Mr. Cortez.

Mr. Cortez stated he had initially submitted one package for the two affected properties; then was told they needed separate applications for the two different properties (98 Elm Street and 95 Elm Street). The

request and verbiage are essentially the same for both cases. He stated there was a typo in the ZBA package. They were requesting a Variance as provided for in Article II Section 201.7 of the zoning ordinance. A Nano brewery is a permitted use under this Section.

Mr. Cortez read his application into the record using the hard copies of slides given to the Board members to explain the application's questions of the proposed Nano brewery and restaurant. He stressed it would not be a bar.

Mr. Cortez stated the main house was at 95 Elm Street. He went through the application and slides explaining the layout of the proposed restaurant area with limited menu (the applicant still needs to go through the state regulations. Currently he does not have a commercial kitchen), lounge bar, tasting room (possible maximum occupancy of 20-30 customers), biergarten, Nano brewery and storage areas. Mr. Cortez stated he has not coordinated with the Fire Chief to discuss things such as fire suppression/mitigation and the maximum occupancy of customers. They were under the impression that the Fire Chief's input was needed for the Planning Board stage of permitting. They wanted to give a residential, park-like experience to customers.

Directly across the street is 98 Elm Street where they propose overflow parking. In the basement of the house at 98 Elm Street they propose to store Nano brewery equipment and storage of kegs that are fermenting. He reiterated the information from the 95 Elm Street lot and said that more would be solidified for the Planning Board.

When asked for input, Mr. Wayne Gutman stated that Mr. Cortez had explained it very well. They were planning a very clean, standard operation that was family oriented.

Mr. Jason Raddatz said it will be a humble operation. He had nothing extra to say, he made the beer.

Acting Chairman Kessler asked if there were questions from the Board. Mr. Spaulding, Sr. had no questions at this time.

Mr. Beard asked Ms. Donovan if she had received all forms back from the abutters. She informed the Board that all abutters were notified; Ms. Donovan said that she had received all forms back. She had received one phone call; those abutters were in attendance. She had received no other correspondence (a number of the abutters are residents of Spring Street). In discussion with Mr. Cortez prior to the ZBA meeting she was under the impression that he had met with abutters at different venues to explain what he was doing. Mr. Cortez could explain that to the Board.

Acting Chairman Kessler opened the hearing to the abutters either in favor or opposed. Mr. Brad Cossingham and wife Nicole, 106 Elm Street, stated he was in opposition to the Nano brewery being allowed at 95 Elm Street. They were the closest abutters to the applicants and most directly affected. The proposed beer garden presents a significant challenge to them noise and activity wise. He is concerned with the applicant's reasons stating how it presents a necessary hardship given the zoning currently in place. Mr. Cossingham listed his other concerns: the dangerous road (speeding) overflow parking on the opposite side of the street, accidents at the intersection of Elm St. and Pine Street. They (applicants and their clients) will be adding alcohol to an already dangerous situation. It was a bad idea for the Town and neighborhood.

Mrs. Nicole Cossingham said they had a very large deck overlooking the property. There is no coverage between the two lots; it would cause problems with customers' movements onto their property without a definitive barrier, and the noise level. It is supposed to be family orientated, but adding alcohol to a situation one never knows what it will be. That is a concern. They will be looking directly at the beer garden; she did not know how it will increase the value of their property. She informed the ZBA members they had had no conversations with the applicants, the Cossinghams had no idea of what was going on until they received a notice in the mail.

Mr. Beard asked, for clarification which house was theirs. Mrs. Cossingham explained its history and location. Ms. Donovan stated she misspoke, she didn't believe he spoke individually with abutters about his Nano brewery.

Acting Chairman Kessler asked if there was anyone else in the room or on zoom who wanted to speak on the case. Ms. Donovan stated no.

There being no further questions from Board members or abutters in attendance, on a motion by Mr. Beard, seconded by Mr. Spaulding, Sr.; ***the Board voted to go into Deliberations. The motion passed 3-0-0.***

When asked, Ms. Donovan explained where the house was in relation to the lot for a previous case. Mr. Spaulding, Sr. said he was very concerned the application did not come forward as one case. He stated that the two cases were intertwined; they should have been heard as one. As two cases, how could Case #1112 pass but not Case #1113 or vice versa? Having parking across Elm Street is unacceptable. He explained the potential dangers of people who have consumed alcohol crossing Elm Street to the parking lot. He stated it would not pass site plan review (Planning Board). Mr. Spaulding, Sr. reviewed the zoning ordinance requirements of a residential neighborhood. He then went over the applicants answers and stated they did not answer or apply answers to the questions.

For clarification, Acting Chairman Kessler told Mr. Spaulding, Sr. that the applicant had submitted the variance request as one case. He had been told it had to be submitted as two because it was two properties. The applicant presented the case at the meeting as a combined package.

Mr. Spaulding, Sr. addressed Ms. Donovan and asked if she and the applicant had discussed the overflow parking. Ms. Donovan stated yes, she had explained to him that the overflow parking would not pass the ZBA due to safety concerns. They had discussed parking on the present site (of the house). Mr. Cortez was going to present it as two cases; one with parking on the same lot as the restaurant. At the ZBA meeting he has presented the case as one instead. Ms. Donovan said the proposal had to be presented as two cases; each goes with their individual lot (of land). She said it would be easy to vote no on one case due to safety concerns and decide (independently) on the other (case).

Mr. Spaulding, Sr. disagreed with the way the case was being presented, adding that hardship had to be shown. Acting Chairman Kessler stated that overflow parking was a concern; Elm Street was hazardous, with cars racing up and down it. He said that Newport would benefit from a Nano brewery; this one is proposed in the wrong zone.

The Board discussed other uses on the street. The school on Elm Street is a permitted use.

Mr. Beard said he agreed with a lot that has been said. There have been many concerns throughout the years about the traffic on Elm Street. If the exact thing was on a different street it would be more foreseeable to do it. There is a lot of danger on Elm Street. From his experience with food, he did not believe they would get all the things necessary (he listed all the requirements needed from the local fire chief). The Fire Chief would never agree to the overflow parking across the street. He was shocked there were not more abutters at the meeting complaining about the proposal.

Mr. Spaulding, Sr. said the applicant had not supplied the ZBA with the fact that there would be overflow parking across the street. That had come to the Board from an abutter. Acting Chairman Kessler stated that the applicant had mentioned overflow parking (in his application and presentation), there was a diagram depicting it in his packet. Mr. Spaulding, Sr. stated he was ready to answer the five questions.

Acting Chairman Kessler asked Mr. Beard if he had additional comments or questions of the applicant. There being none, Mr. Spaulding, Sr. moved ***to go on to the questions***. Mr. Beard seconded the motion. ***The motion passed 3-0-0.***

Ms. Donovan addressed Acting Chairman Kessler and stated he had given the option of continuing to another applicant. Acting Chairman Kessler stated there was no reason for a continuance; the Board was not requesting additional information.

Variance Statement of Reasons and Discussion

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

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

Granting the variance would not be contrary to the public interest. Mr. Spaulding, Sr. spoke on the residential neighborhood and need to change the zoning. He voted no to the question. Acting Chairman Kessler restated the motion to: ***Granting the variance would be contrary to the public interest due to safety reasons.*** Acting Chairman Kessler explained the ZBA voting to Mr. Spaulding, Sr. Acting Chairman Kessler called for a vote. ***The motion passed 3-0-0.***

Acting Chairman Kessler stated it was the end of the case. They had voted no to the question. The Board went through the rest of the questions for the record.

On a motion by Mr. Spaulding, Sr., seconded by Mr. Beard; that: ***The spirit of the ordinance would not be observed.*** Mr. Spaulding, Sr. spoke to the residential zoning and the expectation of the abutters. Acting Chairman Kessler called for a vote. ***The motion passed 3-0-0.***

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

Granting the variance would not do substantial justice. Acting Chairman Kessler added: ***because it would violate the zoning of the area.*** Mr. Spaulding, Sr. Acting Chairman Kessler polled the members. ***They were all in agreement that it would not do substantial justice.***

On a motion by Mr. Spaulding, Sr.; that:

The values of the surrounding properties would be diminished. Mr. Spaulding, Sr. said he could not answer the question. Acting Chairman Kessler and Mr. Beard stated it was more to do with safety.

Unnecessary hardship

Mr. Spaulding, Sr. 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 a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property. Mr. Spaulding, Sr. said he did not see unnecessary hardship. Acting Chairman Kessler said that the purpose of the zoning ordinance is to restrict businesses in the area. This application doesn't show a hardship for this.

Acting Chairman Kessler's subsequent motion was:

A.i. There is 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 it would be creating a commercial business in the midst of a residential area.

AND:

On a motion by Acting Chairman Kessler:

A.ii. that the proposed use is not a reasonable one because it is a residential area.

Acting Chairman Kessler stated the Board had gone through the five questions. they needed a final motion on the Decision. He called for a motion to memorialize the decision of the ZBA whether or not to deny the variance. Mr. Spaulding, Sr. made a motion that ***Case #1112 be denied a Variance due to the failure to successfully complete the five questions required by statute.*** It was seconded by Mr. Beard. Acting Chairman Kessler called for a vote. ***The motion passed 3-0-0.***

Acting Chairman Kessler said the ZBA could say the same for Case #1113 (deny it). Mr. Spaulding, Sr. agreed, but said that he believed they were required to go through the questions again. The Board members discussed the Case procedure, whether or not the applicant should speak to it as a separate case. Mr. Spaulding, Sr. said it was up to the applicant which way the applicant would like to proceed. Acting Chairman Kessler addressed Mr. Cortez and asked if the Board could streamline the process and state the memorialization of Case #1113 only, the applicant agreed.

Mr. Cortez said he was in a law class. He asked if he could have access to the minutes of the meeting and a Notice of Decision. Acting Chairman Kessler said yes to both.

Mr. Spaulding, Sr. addressed the recording secretary to ensure the request and answer was in the minutes (they were). He began to amend his motion.

Ms. Donovan asked, for clarification, that the answers to Case #1112 and #1113 were the same. She was told they were.

Mr. Spaulding, Sr. then addressed Acting Chairman Kessler and stated that even though the ZBA had permission to streamline the Case; the Board should answer all questions for technicalities. Mr. Beard agreed, stating it would then show that the Board had done its due diligence by the applicant. The ZBA Board would show it had heard both Cases completely, in case there was an appeal in the future

Case #1113: Edward Cortez (Owner) Request a Variance as provided for in Article III, Section 307.1 of the zoning ordinance to permit a Nano brewery and restaurant. The property is identified as Map 115 Lot 023 and located at 95 Elm Street in the Residential (R1) Zoning District.

Acting Chairman Kessler stated the application and map provided was the same for Case #1113 and for Case #1112. He asked that the Board members go through the five questions (prongs) for a requested variance.

Variance Statement of Reasons and Discussion

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

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

Granting the variance would be contrary to the public interest due to safety reasons and creating a business in a residential zone. Acting Chairman Kessler called for a vote. ***The motion passed 3-0-0.***

Acting Chairman Kessler made a motion that: ***The spirit of the ordinance would not be observed because it will be creating a business in a residential area.***

Mr. Spaulding, Sr. could not remember voting to memorialize Case #1112. Acting Chairman Kessler called for another vote on the motion to deny. ***The motion passed 3-0-0.***

Acting Chairman Kessler called for a motion to memorialize the decision of the ZBA to deny the variance. Mr. Spaulding, Sr. made a motion ***to deny a Variance for Case #1113.*** It was seconded by Mr. Beard. Acting Chairman Kessler called for a vote. ***The motion passed 3-0-0.***

Acting Chairman Kessler told the applicant his request of a Nano brewery was good, it was unfortunate that it was proposed where it was. He suggested that Mr. Cortez speak to Newport's Economic Development Coordinator Christine Benner. She might have some answers for him. For abutters, he wanted to inform them that ZBA looks at strict guidelines. Many concerns need to be addressed at the Planning Board. Acting Chairman Kessler informed the applicant that he had 30 days to put in an appeal of the decision of the Zoning Board of Adjustment.

Ms. Donovan informed applicants of Case #1110 (Jim Mullane) there would be no additional members coming to the meeting. Acting Chairman Kessler addressed Mr. Mullane and asked him to explain the hardship that postponing his case to the August 19, 2021 meeting would cause. After his explanation, Ms. Donovan explained that the ZBA could hold a special meeting before the August meeting to hear his case. She would get a quorum of (four) unbiased members of the ZBA to sit on the case (Mr. Spaulding, Sr. would not be able to sit on the case). When asked, Ms. Donovan gave all date options available to the Board. On a motion by Mr. Beard, seconded by Acting Chairman Kessler; ***the Board voted to hold a special meeting of the ZBA on July 29, 2021 at 6:30 p.m. to hear Case #1110. The motion passed 2-0-1 (Spaulding abstained).***

Case #1114: Diana Main (Owner): Request a Variance as provided for in Article II, Section 208.5 of the zoning ordinance to permit a carport not meeting the required setback. The property is identified as Map 115 Lot 005 and located at 58 Summer Street in the General Residential (R2) Zoning District.

Acting Chairman Kessler opened Case #1114. He addressed Diana Main (applicant) and asked her to read the application into the record. She complied and explained the reason for her proposal of a variance.

Acting Chairman Kessler asked the Board if there were any questions.

Mr. Spaulding, Sr. asked how the holes for the posts would be dug. He was told hand dug. Posts would be placed below the frontline. When he asked about the runoff, he was told the roof would be flat and pitched to the back away from the abutter, street and house.

Acting Chairman Kessler asked if the location of the carport would be to the front of the property. He was told yes. He asked if the driveway went further back. He was told no. The only option would be to place the carport where they proposed.

There being no further questions and no abutters in attendance or on zoom, on a motion by Mr.

Spaulding, Sr., seconded by Mr. Beard; ***the Board voted to go into Deliberations. The motion passed 3-0-0.***

The Board spoke on the size of the lot, the safety of the owner, and the installation of a carport. They then answered the five prongs necessary for a variance.

Variance Statement of Reasons and Discussion

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

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

Granting the variance would not be contrary to the public interest because the lot size is too small to create the setback needed. There was no discussion by the Board. Acting Chairman Kessler called for a vote. ***The motion passed 3-0-0.***

On a motion by Mr. Spaulding, Sr., seconded by Mr. Beard; that: ***The spirit of the ordinance would be observed.*** Mr. Spaulding, Sr. spoke on safe homes and neighborhoods. Acting Chairman Kessler called for a vote. ***The motion passed 3-0-0.***

On a motion by Mr. Spaulding, Sr., seconded by Mr. Beard; that:
Granting the variance would do substantial justice (as stated in previous questions). Acting Chairman Kessler called for a vote. ***The motion passed 3-0-0.***

On a motion by Mr. Spaulding, Sr., seconded by Mr. Beard; that:
The values of the surrounding properties would not be diminished. He did not believe putting a carport on a nice looking house in a quiet residential area diminishes it, rather it appreciates it. Acting Chairman Kessler called for a vote. ***The motion passed 3-0-0.***

Unnecessary hardship

Mr. Spaulding, Sr. 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 denying it denies the applicant a safe entry to their vehicle. The danger of sliding on the ice because of an exposed car to the elements is hardship. Mr. Beard seconded the motion.

AND:

On a motion by Acting Chairman Kessler:

A.ii. That the proposed use is a reasonable one because it creates a safer environment. Mr. Beard seconded the motion. Acting Chairman Kessler called for a vote. ***The motion passed 3-0-0.***

Acting Chairman Kessler called for a motion to memorialize the decision of the ZBA to grant the variance. On a motion by Mr. Spaulding, Sr., seconded by Mr. Beard; ***the Board granted Case #1114 a Variance for as provided for in Article II, Section 208.5 of the zoning ordinance to permit a carport not meeting the required setback. The property is identified as Map 115 Lot 005 and located at 58 Summer Street.*** Acting Chairman Kessler called for a vote. ***The motion passed 3-0-0.***

Acting Chairman Kessler congratulated the applicant.

Deferred:

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.

Acting Chairman Kessler asked if Ms. Debra Dorherty was in attendance. Ms. Donovan stated she was not and requested that the case be continued to time specific. On a motion by Mr. Spaulding, Sr., seconded by Mr. Beard; ***the Board voted to continue Case #1106 to the August 19, 2021 meeting at 6:30 p.m.*** ***The motion passed 3-0-0.***

On a motion by Mr. Beard, seconded by Mr. Spaulding, Sr.; ***the Board voted to adjourn at 8:35 p.m.***
The motion passed 3-0-0.

Respectfully submitted,

Maura Stetson, Scribe

Approved on: August XX, 2021