

Zoning Board of Adjustment
June 17, 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)

MEMBERS PRESENT BOS ROOM: Ben Nelson, Acting Chairman; Jeffrey Kessler, BOS Representative; Tim Beard

MEMBERS PRESENT via ZOOM: no one

APPLICANT PRESENT via ZOOM:

ABSENT MEMBERS: Scott McCoy, alternate

VIDEOGRAPHER: John Lunn, NCTV

STAFF PRESENT: Christina Donovan, Zoning Administrator

ABUTTERS PRESENT: Cheryl and Mike Gonyea

CALL TO ORDER: Acting Chairman Nelson called the meeting of the ZBA to order at 6:30 p.m. and conducted a roll call of sitting members.

ADMINISTRATION:

Ms. Donovan explained the minutes and request to defer Case #1106 to the July 15, ZBA meeting. On a motion by Mr. Kessler, seconded by Mr. Beard; *the Board voted to move Case #1106 to the July 15, 2021 ZBA meeting. The motion passed 3-0-0.*

On a motion by Mr. Kessler, seconded by Mr. Beard; *the Board voted to table the minutes to the July 15, 2021 ZBA meeting. 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
Tabled.

NEW BUSINESS:

Case #1103 Shaws (Owner) Bailey Signs (agent): Request a Variance as provided for in Article II, Section 412.6 of the Zoning Ordinance to permit more than one sign on the front of the Business. The property is identified as Map 117 Lot 055 and located at 48 John Stark Highway in the Heavy Commercial (B2) Zoning District.

Acting Chairman Nelson opened the public hearing. Addressing all applicants and abutters present, he explained the ZBA format which would be used in every case. He asked that individuals who speak introduce themselves for the recording secretary. He then asked who was presenting Case #1103. Mr. Douglas Boyce addressed Acting Chairman Nelson via zoom and introduced himself.

He explained that the grocery store, Shaws, has initiated a year-round curbside service for their customers. Shaws would like to put up a sign indicating this next to the current Shaws sign. Mr. Boyce explained that Shaws is part of a national conglomerate and many of their stores are adopting the same program during this time. The signage and program have been developed by the parent company; Bailey Signs has been contracted to work for Shaws in Newport, NH and part of their responsibility is to get the permits and variance from the Town of Newport to install the banner as is stated in the Board members packets. Mr. Boyce explained the banner layout and stated its size 4 ft. by 4 ft. (round) which the applicant would like to install on the Shaws storefront.

Mr. Boyce reiterated stating that Shaws has one sign up indicating the store name. They would like a second, non-illuminated 4 ft. by 4 ft. (round) sign put up to advertise the new safety feature for customers.

Mr. Boyce read aloud the Case # 1103 application into the record.

Acting Chairman Nelson asked if there was public that would like to speak. There was none. He asked the Board if they had any questions. Acting Chairman Nelson asked if they were proposing parking in the fire lane as depicted in the Board's packets. He was told no, the photo was for example purposes of the sign only. There being no further questions from the Board members, on a motion by Mr. Kessler, seconded by Mr. Beard; ***the Board voted to go into Deliberations. The motion passed 3-0-0.***

Variance Statement of Reasons and Discussion

Acting Chairman Nelson asked for motions on prongs 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 the store frontage is sufficient to hold the second sign without crowding other businesses. There was no discussion by the Board. Acting Chairman Nelson called for a vote. ***The motion passed 3-0-0.***

On a motion by Mr. Kessler, seconded by Mr. Beard; that: ***The spirit of the ordinance would be observed because the sign will benefit the shoppers without looking out of place.*** Acting Chairman Nelson called for a vote. ***The motion passed 3-0-0.***

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

Granting the variance would do substantial justice because it will provide a benefit to the customers. Acting Chairman Nelson called for a vote. ***The motion passed 3-0-0.***

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

The values of the surrounding properties would not be diminished because Shaw's frontage is sufficient to absorb the second sign. Acting Chairman Nelson called for a vote. ***The motion passed 3-0-0.***

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 sign benefits shoppers. Mr. Beard seconded the motion. Acting Chairman Nelson called for a vote. ***The motion passed 3-0-0.***

AND:

Mr. Kessler made a motion:

A.ii. the proposed use is a reasonable one because it identifies service to customers. It was seconded by Mr. Beard. There was no discussion. Acting Chairman Nelson called for a vote. ***The motion passed 3-0-0.***

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. Beard; ***the Board voted to grant a Variance for Case 1103 in Article II, Section 412.6 of the Zoning Ordinance to permit more than one sign on the front of the Business as presented.*** Acting Chairman Nelson called for a vote. ***The motion passed 3-0-0.***

Acting Chairman Nelson congratulated the applicant and apologized for his wait due to lack of a quorum at the scheduled May 2021 meeting.

Case #1104: Christopher & Jan Whalen (Owner): request a Variance as provided for in Article II Section 208.5 to reduce the rear setback required from 25' to 13'. The property is identified as Map 110 Lot 062 and is located at 69 Court Street in the General Residential (R2) Zoning District.

Acting Chairman Nelson opened the public hearing. Mr. Christopher Whalen addressed Acting Chairman Nelson and asked if he would like him to read aloud the application into the record. Mr. Whalen was told yes and complied, explaining more as he read.

Mr. Whalen told the Board members he had gone and gotten approval from his surrounding neighbors for his proposed garage. Acting Chairman Nelson read aloud a letter from an abutter in support of Mr. Whalen's request.

Acting Chairman Nelson asked if the proposed garage will replace an existing garage. He was told yes. The existing garage was also on a nonconforming footprint.

There was general discussion on the small lots in the neighborhood. Mr. Kessler requested that the Planning Board look at the setback requirements for the area (R-2 District).

There were no further questions from the Board members. On a motion by Mr. Kessler, seconded by Mr. Beard; ***the Board voted to go into Deliberations.*** ***The motion passed 3-0-0.***

Acting Chairman Nelson addressed the viewing public and stated that going to neighbors for their approval before going to the Zoning Board saves a lot of time.

Variance Statement of Reasons and Discussion

Acting Chairman Nelson asked for motions on prongs 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 the lot sizes in the neighborhood do not accommodate the required setbacks. There was no discussion by the Board. Acting Chairman Nelson called for a vote. ***The motion passed 3-0-0.***

On a motion by Mr. Kessler, seconded by Mr. Beard; that: ***The spirit of the ordinance would be observed because the actual setback will be sufficient to access the back of the property.*** Acting Chairman Nelson called for a vote. ***The motion passed 3-0-0.***

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

Granting the variance would do substantial justice because it will let the property owners utilize their lot to suit their needs. Acting Chairman Nelson called for a vote. ***The motion passed 3-0-0.***

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

The values of the surrounding properties would not be diminished because a new garage will add value. Acting Chairman Nelson called for a vote. ***The motion passed 3-0-0.***

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:

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 lot size does not allow the required setback. It was seconded by Mr. Beard. There was no discussion. Acting Chairman Nelson called for a vote. ***The motion passed 3-0-0.***

AND:

Mr. Kessler made a motion:

The proposed use is a reasonable one because it allows the property owner to utilize their property as they want. It was seconded by Mr. Beard. There was no discussion. Acting Chairman Nelson called for a vote. ***The motion passed 3-0-0.***

Acting Chairman Nelson called for a motion to memorialize the decision of the ZBA to grant the variance. Mr. Kessler made a motion that: ***the Board grant a Variance for Case #1104: Christopher & Jan Whalen (Owner) as provided for in Article II Section 208.5 to reduce the rear setback required from 25' to 13' as presented.*** It was seconded by Mr. Beard. Acting Chairman Nelson called for a vote. ***The motion passed 3-0-0.***

Acting Chairman Nelson congratulated the applicant. During a brief discussion Mr. Whalen stated he was applying for a position on the ZBA.

At Ms. Donovan's request, the Board adjusted the agenda. Case #1105 was moved to after Case #1109.

Case #1107: Brandon and Holly White (Owner): Request a Variance as provided for in Article II, Section 206.5 to reduce the front setback requirement. The property is identified as Map 239 Lot 020 and located at 134 Cutts Road in the Rural (R) Zoning District.

Acting Chairman Nelson opened the public hearing and asked who was presenting the case. Mr. Brandon White addressed Chairman Nelson via zoom. He did not have the case paperwork. He explained that what they wanted to do was replace an existing shed with a garage. It would be at the same setback as the shed is (the shed is non-conforming to the setback for the area). He explained the hardship of moving the proposed garage back into the setback (still non-conforming).

Acting Chairman Nelson asked, for clarification, that the garage would be at the same setback as the existing shed and would be larger. He was told yes.

When asked, Ms. Donovan read aloud Case #1107's application into the record.

Mr. Kessler asked Mr. White if his house was able to meet the 50' setback necessary for the Zoning District. Mr. White stated he had never measured the distance.

There being no questions from the Board members, on a motion by Mr. Kessler, seconded by Mr. Beard; ***the Board voted to go into Deliberations. The motion passed 3-0-0.***

Variance Statement of Reasons and Discussion

Acting Chairman Nelson asked for motions on prongs 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 the garage would replace the existing shed with the same setback. There was no discussion by the Board. Acting Chairman Nelson called for a vote. ***The motion passed 3-0-0.***

On a motion by Mr. Beard, seconded by Mr. Kessler; that: ***The spirit of the ordinance would be observed because it will allow the property owner to use his property as he likes and would still maintain a setback of 20 ft.*** Acting Chairman Nelson called for a vote. ***The motion passed 3-0-0.***

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

Granting the variance would do substantial justice because the contour of the land would make moving the garage further back excessively expensive. Acting Chairman Nelson called for a vote. ***The motion passed 3-0-0.***

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

The values of the surrounding properties would not be diminished because the new garage will add value to the property. Acting Chairman Nelson called for a vote. ***The motion passed 3-0-0.***

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 existing shed has a similar setback and the property contour prohibits moving it back. Mr. Beard seconded the motion. Acting Chairman Nelson called for a vote. ***The motion passed 3-0-0.***

AND:

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

A.ii. The proposed use is a reasonable one because it sits on the existing setback footprint. There was no discussion. Acting Chairman Nelson called for a vote. ***The motion passed 3-0-0.***

Acting Chairman Nelson called for a motion to memorialize the decision of the ZBA to grant the variance. On a motion by Mr. Beard, seconded by Mr. Kessler; ***the Board voted to grant a Variance for Case #1107 as provided for in Article II, Section 206.5 to reduce the front setback requirement as presented.*** There was no discussion by the Board. Acting Chairman Nelson called for a vote. ***The motion passed 3-0-0.***

Acting Chairman Nelson congratulated the applicant.

Removed: Case #1108: Bar Harbor Bank (Owner) Douglas Ring (Agent) Per request of Agent:

Request a Special Exception as provided for in Article II, Section 209.2 for the addition of a single-family dwelling. The property is identified as Map 107 Lot 016 and located at 300 Sunapee Street Light Commercial (B1) Zoning District.

Case #1109: Ernest Watts (Owner): Request a Special Exception as provided for in Article IV, Section 403 for the creation of a backlot. The property is identified as Map 235 Lot 035 and located at 49 Barton Whitney Road in the Kellyville (K) District.

Acting Chairman Nelson opened the public hearing.

Chairman Nelson addressed the applicant (Mr. Ernest Watts) and asked that he present his case. Mr. Watts explained what he was proposing to do: make two building lots (two two acre lots) from one on land he had purchased. Ms. Donovan explained to the Board that Mr. Watts had to apply for a Special Exception from the ZBA before he could go to the Planning Board. She then explained the process he will go through with the Planning Board to create the backlot.

There were no questions from the Board members. On a motion by Mr. Beard, seconded by Mr. Kessler; ***the Board voted to go into Deliberative Session for Case #1109. The motion passed 3-0-0.***

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. Standard A has been met.*** The motion was seconded by Mr. Beard. Acting Chairman Nelson called for a roll call vote. ***The motion passed 3-0-0.***

Standard B

Mr. Beard made a motion that: ***The proposed use will not be injurious, noxious or offensive or in any way detrimental to the neighborhood. Standard B has been met.*** The motion was seconded by Mr. Kessler. Acting Chairman Nelson called for a roll call vote. ***The motion passed 3-0-0.***

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. Standard C has been met.*** It was seconded by Mr. Beard. Acting Chairman Nelson called for a vote. ***The motion passed 3-0-0.***

Acting Chairman Nelson asked for a motion on a collective Standard A, B and C for Case #1109. On a motion by Mr. Kessler, seconded by Mr. Beard; ***the Board approved the Special Exception for Case #1109 as presented.*** Acting Chairman Nelson called for a roll call vote. ***The motion passed 3-0-0.***

Acting Chairman Nelson congratulated the applicant.

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 Nelson addressed Ms. Donovan and inquired about the applicant for Case #1105. Ms. Donovan said the applicant was not in attendance (the applicant had been available for the cancelled May 2021 meeting). She requested that the Case be continued to the July 15, 2021 ZBA meeting.

On a motion by Mr. Kessler, seconded by Mr. Beard; ***the Board voted to continue Case # 1105 to the July 15, 2021 meeting. The motion passed 3-0-0.***

On a motion by Acting Chairman Nelson, seconded by Mr.Kessler; *the Board voted to adjourn at 7:21 p.m. The motion passed 3-0-0.*

Respectfully submitted,

Maura Stetson, Scribe

Approved: July XX, 2021