

**Zoning Board of Adjustment**  
**November 4, 2021 6:30 PM**  
**Board of Selectmen's Room/Municipal Building**  
**15 Sunapee Street/Newport, NH**

---

**PRESENT BOS ROOM:** Ben Nelson, Chairman; Timothy Beard, Vice Chairman; Christopher Whalen, Jeffrey Kessler, BOS Representative; Bert Spaulding, Sr.

**ABSENT MEMBERS:** Scott McCoy, alternate

**VIDEOGRAPHER:** John Lunn, NCTV

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

**PUBLIC PRESENT:** Jessica and Joshua Linn

**CALL TO ORDER:** Ms. Donovan called the meeting to order at 6:30 p.m. followed by a roll call.

**ADMINISTRATION:** Ms. Donovan stated there was not a Chairman or Vice Chairman present at the meeting. Officers had not been voted on in sixteen months. She asked that the Board appoint a Chairperson for the November 4, 2021 meeting. She also informed the Board that there was no zoom availability at the November 4<sup>th</sup> meeting.

Vice Chairman Nelson arrived at the meeting at 6:31p.m.

The Board and Ms. Donovan discussed reorganizing the Board for the year (until June 2022). All full members were in attendance at the meeting. Mr. Nelson stated he would like step down as Chairman of the Board. He agreed to continue as Chairman until June 2022, at which time a new Chairman would be chosen (Vice Chairman would move up to Chairman position). Mr. Spaulding, Sr. made a motion *to nominate Mr. Ben Nelson as Chairman of the Zoning Board of Adjustments for the remainder of the term*. It was seconded by Mr. Kessler. *The motion passed 5-0-0.*

Chairman Nelson took over the meeting.

After a brief discussion, Mr. Spaulding, Sr. made a motion *to nominate Mr. Timothy Beard as Vice Chairman of the Zoning Board of Adjustments*. It was seconded by Chairman Nelson. *The motion passed 5-0-0.*

**MINUTES:** none

**NEW BUSINESS/ PUBLIC HEARINGS:**

**Case #1121– Joshua and Jessica Linn (owners):** Request a Variance as provided for Article II, Section 206.5 of the Zoning Ordinance to permit an addition not meeting the required rear yard setback. The property is identified as Map 215 Lot 004 and located at 315 Reeds Mill Road in the Rural (R) Zoning District.

Chairman Nelson opened Case #1121. He acknowledged Mr. and Mrs. Linn and asked them to explain what they proposed. Mr. Linn explained they were applying for a variance to construct two additional rooms. The application stated 20' x 20'; it should be 22' x 22' (for construction purposes). Mr. Linn then read their application into the record.

There were no abutters present.

Mr. Whalen asked Ms. Donovan if she had been in contact with the abutters. She stated one abutter had called. He had no issues; the abutter's concern was any restriction from building close to the river (on the adjacent property). Mrs. Linn stated that the abutters land had wetlands on it which would limit its use.

Board members and the Linn's discussed:

- The distance from their house to the middle of the stream (Lily Brook)
- The high water mark during heavy rains (the Linn's had lived in the house since 2006 and could give historical data).
- The construction would be on piers

Using a diagram provided to the Board, the Board and applicants discussed the proposed additions' location to the brook and the rear yard property line. The Board stated that they lived on a nonconforming lot (for the Rural (R) Zoning District). It was hardship prone for the addition.

After a general discussion, Chairman Nelson called for a vote to go into Deliberations.

On a motion by Mr. Kessler, seconded by Mr. Beard; ***the Board voted to go into Deliberations. The motion passed 5-0-0.***

The Board discussed the hardship in Case #1121. Mr. Spaulding, Sr. requested that the ZBA answer not only the five regular questions, but also the three questions from the State Supreme Court Variance Case. He wanted to ensure that the Board and applicants were "covered" legally. The Board members concurred with his request.

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

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 it is a small non-conforming lot and the addition allows the owners to utilize their property.*** Chairman Nelson called for a vote. ***The motion passed 5-0-0.***

Mr. Kessler made a motion that: ***The spirit of the ordinance would be observed because the lot is small for the zoning district and it allows the owner to utilize his property.*** It was seconded by Mr. Beard. Chairman Nelson called for a vote. ***The motion passed 5-0-0.***

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

***Granting the variance would do substantial justice because it allows the owner to put on a needed addition so they can stay on that property and continue to grow.*** Chairman Nelson called for a vote. ***The motion passed 5-0-0.***

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

***The values of the surrounding properties would not be diminished because the property owners are adding value to the neighborhood.*** Chairman Nelson called for a vote. ***The motion passed 5-0-0.***

#### **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 lot is one third the size of lots in the Rural (R) Zoning District.*** It was seconded by Mr. Whalen.

An amendment added was: ***the lot size is grandfathered.*** It was seconded by Mr. Spaulding, Sr. Chairman Nelson called for a vote. ***The motion passed 5-0-0.***

AND:

***A.ii. that the proposed use is a reasonable one because it allows the owner to utilize their property.***  
It was seconded by Mr. Beard. There was no discussion. Chairman Nelson called for a vote. ***The motion passed 5-0-0.***

Mr. Spaulding, Sr. read aloud the three new questions from the State Supreme Court Variance Case:

1) A zoning restriction as applied to their property interferes with their reasonable use of the property, considering the unique setting of the property in its environment. The Board stated yes.

(2) No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property. The Board stated yes.

(3) The variance would not injure the public or private rights of others. The Board stated yes.  
Case #1121 passed all three questions.

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. Whalen; ***the Board voted to grant a Variance for Case #1121 – Joshua and Jessica Linn-as presented.*** Chairman Nelson called for a vote. ***The motion passed 5-0-0.***

Chairman Nelson congratulated the applicant.

(For the full discussion go to: [www.nctv-nh.org](http://www.nctv-nh.org) )

The ZBA members held a lengthy discussion on:

- 1) The Simplex Case and the court.
- 2) The use of the new three questions during Variance cases versus the standard five questions
- 3) The need for training for all ZBA and Planning Board members; where, when and how
- 4) Requested a conference call with the Town attorney concerning the Simplex Case and the RSA.

Ms. Donovan was directed to set it up.

Ms. Donovan informed the Board members they would be receiving new zoning ordinance books and supplements. She will specifically ask for updates to the zoning ordinances for the Boards use.

On a motion by Mr. Beard, seconded by Mr. Whalen; ***the Board voted to adjourn at 7:41 pm. The motion passed 5-0-0.***

Respectfully submitted,

Maura Stetson, Scribe

Approved on: November XX, 2021

The next regular meeting of the ZBA will be on Thursday, November 18, 2021 in the Board of Selectmen's Room.

