

**Town of Newport  
Zoning Board of Adjustment  
April 21, 2022 6:30 PM  
Board of Selectmen's Room/Municipal Building  
15 Sunapee Street/Newport, NH**

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

**ABSENT MEMBERS:** Scott McCoy, alternate

**VIDEOGRAPHER:** John Lunn, NCTV

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

**COMMUNITY MEMBERS PRESENT:** Amy Coleman, abutter (Case #1127) *via zoom*

**CALL TO ORDER:** Chairman Nelson called the meeting to order at 6:33 p.m. followed by a roll call of members present.

**ADMINISTRATION:**

- ❖ Request to remove Case #1128 from the docket

Ms. Donovan requested that Case #1128 { **Case #1128: WATERSTONE SUGAR RIVER, One Credit Union:** Request a Variance as provided in Article II, Section 207.5 to permit a structure within the setback. The property is identified as Map 111 Lot 079 and is located at 70 John Stark Highway in the Heavy Commercial (B2) Zoning District} be removed from the ZBA docket. She explained why. Chairman Nelson concurred with her request and removed Case #1128 from the docket.

- ❖ ZBA Worksheets-the agenda item was moved to after the cases were heard.

**MINUTES:** July 16, 23, 2020; August 20, 2020; March 17, 2022

Mr. Kessler made a motion *to approve the minutes of the July 16, 2020 meeting as presented*. It was seconded by Mr. Beard. *The motion passed 4-0-1 (Spaulding abstained)*.

Mr. Kessler made a motion *to approve the minutes of the July 23, 2020 meeting as presented*. It was seconded by Mr. Beard. *The motion passed 4-0-1 (Spaulding abstained)*.

Chairman Nelson explained to the applicants present the legal procedure for voting on minutes if a quorum of present members was not at a meeting.

Mr. Kessler made a motion *to approve the minutes of the August 20, 2020 meeting as presented*. It was seconded by Mr. Whalen. *The motion passed 4-0-1 (Nelson abstained)*.

Mr. Kessler made a motion *to approve the minutes of the March 17, 2022 meeting as presented*. It was seconded by Mr. Beard. *The motion passed 4-0-1 (Spaulding abstained)*.

Mr. Beard asked that the record show the ZBA had cleaned up (approved) two years' worth of minutes. The Board members then held a general discussion on the cases that had been heard during that timeframe and directed Ms. Donovan to look into the progress of the projects.

**NEW BUSINESS:**

**Case #1126: Andy Avery:** Request a Variance as provided in Article II, Section 206.5 to permit a structure within the front yard setback. The property is identified as Map 105 Lot 019 and is located at 590 Maple Street in the Rural (R) Zoning District.

Mr. Spaulding, Sr. addressed the Chair and corrected the applicants' names in the case header. It should read: Andrew Ivey and Love Lynn Ivey. Ms. Donovan agreed, saying the applicants names were posted with a typographical error.

Chairman Nelson opened Case #1126.

Addressing Mr. Ivey, Chairman Nelson asked him to explain what he proposed to the Board. They would then open the case to any abutters.

Mr. Ivey addressed the Board and stated they live at 590 Maple Street. There is an existing 24 x 39 cement pad. They would like to put a single story wooden barn (for storage) on its 24 x 39 footprint. The pad is preexisting from before they purchased the property (a barn had been on it). The setback from Maple Street is 50' from the road; they are asking for a variance of 8 feet. The abutting neighbors are 50 yards on either side of their property. Mr. Ivey explained the reasons he would like to use the existing pad.

There were no questions from abutters.

Chairman Nelson asked the Board members if they had any questions.

Mr. Spaulding, Sr. asked why the applicants' grandfathered status for the structure does not stand. Mr. Spaulding, Sr. explained the grandfather status. He understood the barn (original) was torn down because it was dilapidated. There has been no clear intent to abandon. Other Board members were not aware of the grandfathered structure. Mr. Spaulding, Sr. made a motion for approval of the variance request.

Ms. Donovan addressed Chairman Nelson and the Board and explained the Zoning office's stand on the need for a variance. She explained that in the future, if a question arose concerning the placement of the proposed barn there would be proper paperwork and a variance decision in their case file. Paperwork would be in order for future administrators and land sales.

There was a general discussion on the grandfathered status, granted variances, codes and property rights. Mr. Whalen called for a vote on the variance. The applicant had waited long enough.

Mr. Whalen made a motion *to go into Deliberations*. It was seconded by Mr. Kessler. ***The motion passed 5-0-0.***

After a short discussion on the case, Chairman Nelson asked for motions on prongs one through five.

**Variance Statement of Reasons and Discussion**

Mr. Kessler made a motion that: ***Granting the variance would not be contrary to the public interest because it is in a rural setting, the neighbors are not nearby, and there was an existing structure on the spot before.*** It was seconded by Mr. Beard. Chairman Nelson called for a vote. ***The motion passed 4-0-1 (Spaulding abstained).***

Mr. Kessler made a motion that: ***The spirit of the ordinance would be observed because the character of the neighborhood would not be changed.*** It was seconded by Mr. Whalen. Chairman Nelson called for a vote. ***The motion passed 4-0-1 (Spaulding abstained).***

Mr. Kessler made a motion that: ***Granting the variance would do substantial justice because it will allow the property owner to utilize their property in a beneficial way.*** It was seconded by Mr. Beard. Chairman Nelson called for a vote. ***The motion passed 4-0-1 (Spaulding abstained).***

Mr. Kessler made a motion that: ***The values of the surrounding properties would not be diminished because it is a rural setting, there was a structure there before and the neighbors are not nearby.*** It was

seconded by Mr. Whalen. Chairman Nelson called for a vote. ***The motion passed 4-0-1 (Spaulding abstained).***

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 moving the structure will create an economic hardship and require substantial changes to the terrain.***

AND:

***A.ii. that the proposed use is a reasonable one because it utilizes the existing slab that previously supported a similar structure.*** It was seconded by Mr. Whalen. There was no discussion. Chairman Nelson called for a vote. ***The motion passed 4-0-1 (Spaulding abstained).***

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 the Variance for Case #1126 as presented.*** Chairman Nelson called for a vote. ***The motion passed 4-0-1 (Spaulding abstained).***

Chairman Nelson congratulated Mr. and Mrs. Ivey. He stated that any abutter could appeal the ZBA decision within 30 days.

**Case # 1127: Becky Bates (Owner):** Request a Variance as provided in Article II, Section 207.5 to permit a structure within the setback. The property is identified as Map 111 Lot 079 and is located at 107 Cheney Street in the Single Family Residential (R1) Zoning District.

Chairman Nelson opened Case #1127.

Mr. Spaulding, Sr. asked if the applicants were requesting a variance to the side setback. He was told side and rear setbacks. Ms. Donovan stated the shed ordinance to be voted on at the May 10, 2022 Town voting was in their packets. Mr. Kessler stated the ordinance was not relevant to the case (not approved by Town voting yet).

Chairman Nelson addressed Robert and Rebecca (Becky) Bates and asked them to explain what they propose. Ms. Bates gave the history of her two sheds; they had received permitting from a previous zoning administrator in 2005. There had been no complaints until 5 years ago when they received a letter stating they were out of compliance. The administrator at the time (2005) told them that they were fine, now they have received three non-compliance (NC) letters. Mr. and Mrs. Bates stated it would be a huge hardship to move the sheds (they explained). They are before the ZBA to get a variance for one shed to be in compliance. After the May voting they believe the second shed will be in compliance.

The Bates stated there had been a dispute with neighbors who had also been told that their sheds were not in compliance. The neighbors had pointed out the Bates sheds were not in compliance as well (as theirs). Ms. Donovan stated the Bates were before the ZBA for one variance. Hopefully after Town meeting with the new ordinance the other shed will be in compliance.

When asked the size of the sheds, the Bates said 10' x 10'. They and many other people in town were under the impression that sheds 10' x 10' did not need a permit. They stated the Town has been aware of the sheds. They are taxed on them every year. There was a general discussion between Board members and the Bates.

Mrs. Bates stated they want to be in compliance. If it means paying for a variance, that's what they will do. There was a brief discussion on moving the sheds and the size of their lot.

Mr. Kessler addressed Ms. Donovan and for clarification asked:

- 1) If the proposed shed ordinance was for one shed 20 sq. ft. or less. She concurred.
- 2) He asked: All other sheds and accessory buildings need to comply with the setbacks in their zones. She agreed.
- 3) Mr. Kessler asked what the special provisions (as stated in the proposed shed ordinance) were.
- 4) Ms. Donovan stated the special exception dealt with sheds in trailer parks. There are no special provisions in the R1 Zoning District.

There was a general discussion on the case and the spirit of the ordinance. Mr. Beard stated that the spirit of the zoning ordinance is to protect the neighborhood to ensure that rural neighborhoods remain rural and downtown stays as downtown. During further discussion, the Bates stated they had a permit (from the 2005 zoning administrator). It was also clarified that the shed on the right southeast corner of the property was the one they were seeking the variance for.

Before the Board went into deliberations Ms. Donovan asked if it would be best to postpone their decision until after the Town voting on May 10, 2022. She was told no. After additional discussion, Mr. Kessler requested the ZBA concentrate on Case #1127 and the variance that is before them.

Mr. Whalen made a motion *to go into Deliberations*. It was seconded by Mr. Kessler. ***The motion passed 5-0-0.***

Chairman Nelson asked for motions on prongs one through five.

**Variance Statement of Reasons and Discussion**

Mr. Kessler made a motion that:

***Granting the variance would not be contrary to the public interest because it is a preexisting structure with a reliance on its legality.*** He was interrupted by an abutter.

Ms. Amy Coleman, abutter, addressed Chairman Nelson and asked if abutters would be allowed to speak. Chairman Nelson apologized, he was not aware of an abutter on zoom. On a motion by Mr. Kessler, seconded by Mr. Whalen; ***the Board exited Deliberations for participation of an abutter in Case #1127. The motion passed 5-0-0.***

Ms. Amy Coleman stated that their fence abuts the Bates shed. She said that as been discussed with the Bates, the Coleman's had also built their shed prior to the current zoning administration. They had been told originally they could put their shed anywhere they wanted (on the property). There being no issues, they built their shed on the opposite side of the Bates. Their shed and fence created problems with their other abutting neighbor.

In contacting Ms. Donovan, the Coleman's were told they were not in compliance with their shed and it had to be moved. The Coleman's shed had been 5 feet away from the line. Ms. Donovan said it didn't matter what Ms. Magnuson had said previously, the shed was out of compliance and the Coleman's had to move their shed. Ms. Coleman gave the history of her shed (2014):

1. Contacted town,
2. Asked if there was a shed ordinance or need for a permit
3. Ms. Magnuson stated no. Ms. Coleman did not get anything in writing.
4. Moving it was a hardship, but they complied

The Bates believe the Colemans have a problem with their shed, they did not. The problem arose because the Colemans were "picked on" by the Town. Ms. Coleman wanted to know why the Bates were able to

keep their shed (non-compliant) and they weren't. Mr. Whalen addressed Ms. Coleman and asked if she was aware she could apply for a variance. No. Ms. Donovan had stated (moving) was the rule. (Ms. Donovan negated this to the Board. She gave an account of the complaints and the non-compliant sheds she had found). The Board had a general discussion on the sheds in the neighborhood referencing the neighborhood map in their packets. There were a number that were not in compliance, one had been built over a property line.

Mr. Bates stated they want to be in compliance. Mr. Spaulding, Sr. asked the Bates to explain their hardship in moving one shed.

When asked, Ms. Coleman addressed the Board and stated they were not treated as fairly as the Bates. The Coleman shed was up for almost 10 years as well.

Mr. Spaulding, Sr., made a motion *to reenter Deliberations*. It was seconded by Mr. Whalen. *The motion passed 5-0-0.*

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

*Granting the variance would not be contrary to the public interest because the lots are small and the sheds existed there for 15 years.* Chairman Nelson called for a vote. *The motion passed 4-0-1 (Spaulding abstained).*

Mr. Kessler made a motion that: *The spirit of the ordinance would be observed because of the owner's expectation and longevity of their building being in its location.* It was seconded by Chairman Nelson. Chairman Nelson called for a vote. *The motion passed 4-0-1 (Spaulding abstained).*

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

*Granting the variance would do substantial justice because moving the sheds would diminish the use of their property and they (sheds) have been there for 15 years without issue.* Chairman Nelson called for a vote. *The motion passed 4-0-1 (Spaulding abstained).*

On a motion by Mr. Kessler, seconded by Chairman Nelson that:

*The values of the surrounding properties would not be diminished because the sheds have been taxed since they have been put in.* Chairman Nelson called for a vote. *The motion passed 4-0-1 (Spaulding abstained).*

#### 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 shed has existed in their locations for the last 15 years without issue.*

AND:

*A.ii. that the proposed use is a reasonable one because it allows the property owner to continue the use of their property.* It was seconded by Mr. Beard. There was no discussion. Chairman Nelson called for a vote. *The motion passed 4-0-1 (Spaulding abstained).*

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 the Variance for Case #1127as presented.* Chairman Nelson called for a vote. *The motion passed 4-0-1 (Spaulding abstained).*

After a ZBA discussion, Mr. Spaulding, Sr. made a motion *that the Zoning Administrator come back to the ZBA with an opinion on grandfathered status of a foundation or building (as in Case #1126)*. It was seconded by Mr. Beard. *The motion passed 5-0-0.*

ZBA worksheets (for full discussion, go to: [www.nctv-nh.org](http://www.nctv-nh.org))

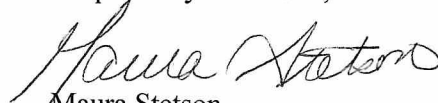
The ZBA held a lengthy discussion on the use of the ZBA worksheets in the process of approving or denying a case, and whether it was legally necessary. Ms. Donovan explained her research of neighboring towns and their procedures. Mr. Kessler looked up the zoning code (**674:3 Powers of Zoning Board of adjustment**) which stated the necessity of the Board answering all five prongs to establish the Board's vote to grant or deny variances. Mrs. Stetson addressed the Board and Chair and stated she has attended several meetings of an abutting town's zoning board. They did not use a worksheet and did not answer the prongs as Newport does. Their procedure makes it very confusing to applicants, abutters and citizens in attendance as well as some of their ZBA members. Their procedure also makes it difficult to file an appeal of a case in their town.

During further discussion, the Board members gave their opinions on the use of the worksheets. It was decided to have the Chairman (of the meeting) write the official meeting motions on the established worksheet. The worksheet motions and votes as well as the official motion and memorialization of the case(s) will also be in the recording secretary's minutes. Mr. Spaulding, Sr. made a motion *that whoever makes a motion on each of the required items (prongs) and the Board follows down through with a vote for each motion*. It was seconded by Mr. Kessler. *The motion passed 5-0-0.*

Continued Business: none

On a motion by Mr. Spaulding, Sr., seconded by Mr. Kessler; *the Board voted to adjourn at 8:22 p.m. Eastern Daylight Time. The motion passed 5-0-0.*

Respectfully submitted,



Maura Stetson  
Scribe

Approved on: May 19, 2022

The next meeting of the ZBA will be on May 19, 2022 at 6:30 pm in the Board of Selectmen Room.