

**Zoning Board of Adjustment
September 28, 2017 6:30 PM
Board of Selectmen's Room/Municipal Building
15 Sunapee Street/Newport, NH**

PRESENT: Melissa Saccento Chairman; David Lain, Vice Chairman; Ben Nelson, Jeffrey Kessler, BOS Representative; Beth Cassorla, Scott McCoy, Alternate

ABSENT MEMBERS: Tim Beard, Alternate; Virginia Irwin, Alternate

VIDEOGRAPHER: NCTV

STAFF PRESENT: Julie M. Magnuson, Planning & Zoning Administrator

COMMUNITY MEMBERS PRESENT: Mark Bachelder, Jen Benward, Don Chabot, CRB, GRI, CBR Town & Country Realty Associates

CALL TO ORDER: Chairman Saccento called the meeting of the ZBA to order at 6:30 p.m. and introduced the sitting Board members. Chairman Saccento stated that Alternate Scott McCoy would sit with the Board and ask questions but would not be a voting member during cases at this meeting.

ADMINISTRATION: Ms. Magnuson told the ZBA members that she had passed out the new ordinances for 2017. She instructed them to please throw out the old ordinances and to place the new ones in their notebooks. Ms. Magnuson informed the Board that there was a new section added. The two major changes with new rules were on Accessory Dwelling Units (ADUs) and signs.

MINUTES: July 27, 2017

July 27, 2017

On a motion by Mr. Kessler; seconded by Mrs. Cassorla; *the Board voted to approve the minutes of the July 27, 2017 meeting with the following corrections: page 1, last paragraph, the word concessional should be concession; page 2 paragraph ten, Reginal Dodge should be spelled Reginald Dodge; page 9, last line of paragraph one, Standard D should be Standard E. The motion passed 6-0-0.*

Chairman Saccento reviewed the ZBA format for the public and applicants present. It was reiterated that Mr. McCoy would sit on the Board for questions and discussions during the hearings, but would not take part in voting.

NEW BUSINESS:

Case #1052: Lawrence DeCristofaro (Owner) and Irene Aver (Agent) request a Variance to the terms of Article II, Section 211.3 of the Zoning Ordinance to permit a Second Hand/Antique Shop with a defined area to display merchandise in front of the store. The property is identified as Map 102 Lot 016 and located at 429 Sunapee Street in the Industrial (I) Zoning District.

Chairman Saccento opened the hearing. She then acknowledged Ms. Magnuson. Ms. Magnuson read her Administrative Review into the record. Ms. Magnuson stated that the ZBA issued a Special Exception for the property on August 22, 2013. She issued a Notice of Violation on August 22, 2017. Ms. Magnuson included and referenced a letter from the Chief of the Newport Police Department.

Chairman Saccento acknowledged Mr. DeCristofaro (owner). Mr. DeCristofaro addressed the Chairman and began to explain why his tenant needed to be able to display more than one item outside her Second-hand/Antique Shop; more than one stock-in-trade item.

Chairman Saccento addressed Mr. DeCristofaro and stated things were being presented backwards. The applicant needed to read her application into the record and answer questions from the ZBA members first; then he would be able to speak on the applicant's behalf. There was a short discussion on Mr. DeCristofaro addressing the Board before the applicant presented her case.

Chairman Saccento acknowledged applicant Irene Ayers. Ms. Ayers read her application into the record. Chairman Saccento asked if the applicant could show a photo of the proposed display. She did not have one. After discussion about the dimensions needed and infringement of the State right-of-way, Mr. Kessler stated that the ZBA could not condone putting things in the State right-of-way. It was not the responsibility of the ZBA to measure the distance of the right of way to the building. It was the ZBA's responsibility to decide whether to grant a variance to the original approval of the Special Exception.

There was a discussion between ZBA members and Ms. Magnuson about the case and secondhand shops.

Mrs. Cassorla drew an illustration on the white board of the building, the proposed display area and parking spaces.

There was a short discussion on where and what would be allowed as a part of the display. Mr. Mark Bachelder asked exactly where items could be displayed. He was told up to four feet from the front of the building.

There being no further questions or comments from the public, applicant or Board members, Chairman Saccento closed the meeting to the public. On a motion by Mrs. Cassorla, seconded by Mr. Nelson; ***the Board voted to go into Deliberations. The motion passed 5-0-0.***

Chairman Saccento explained to the applicant and public that when the Board was in deliberations discussion was only among the ZBA members.

Variance Statement of Reasons and Discussion

Chairman Saccento asked for motions on questions one through five.

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

Granting the variance would not be contrary to the public interest because: it is a practice that has happened for a couple years with no negative impacts. Chairman Saccento stated it was a reasonable decision to put the display in the proposed area. Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

On a motion by Mrs. Cassorla, seconded by Mr. Nelson; that:

The spirit of the ordinance would be observed because there are other businesses near the business location that have displays of their wares in front of their business as a way to attract people to their shop. Chairman Saccento stated it was an industrial area; she did not see where the request was unreasonable. Mrs. Cassorla listed other stores in the vicinity that displayed their wares. Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

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

Granting the variance would do substantial justice for the same reason (there are other businesses near the business location that have displays of their wares in front of their business as a way to attract

people to their shop). The Chair asked for discussion. There was none. Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

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

The values of the surrounding properties would not be diminished because the properties are all in the industrial zone and many have outside displays of merchandise. Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

Unnecessary hardship

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:

On a motion by Mr. Kessler, seconded by Mrs. Cassorla; ***Part B. applies because it would be a hardship not to have merchandise displayed. It would impact the future of the business.*** ***The motion passed 5-0-0.***

Chairman Saccento called for a motion to memorialize the decision of the ZBA to grant the variance. On a motion by Mrs. Cassorla, seconded by Mr. Kessler; ***the Board voted to grant a Variance for Case #1052 to permit a Second Hand/Antique Shop with a defined area to display merchandise in front of the store with the following condition:***

- 1. The area of display fall between the two awnings in the front of the shop, not exceed into the State right-of-way as defined by the landlord and tenant as well as underneath the awnings.***

Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

Mr. DeCristofaro thanked the ZBA. He asked if there would be any times in which his tenant could have a clearance sale and use more than the granted area for display of her merchandise. The Board consulted Ms. Magnuson on the ordinance. Ms. Magnuson stated there was not a fixed ordinance for this situation. Therefore, since the applicant had more than the required parking spaces for the shop, she would be allowed to use the extra spaces to display her wares during a clearance sale. The tenant would be responsible to bring all items into the shop each night as defined in the granted variance and the verbal request. There was a general discussion among the ZBA members on this permission.

Ms. Magnuson addressed Mr. DeCristofaro and Ms. Ayers and stated a Notice of Decision would be available within five business days. She also stated that individuals had a 30 day appeal period.

The Board congratulated Ms. Ayers and Mr. DeCristofaro on their granted variance.

Case #1053: Ken Mello (Owner) DBA/Rock Solid Real Estate, LLC request a Variance to the terms of Article II, Section 206.1 of the Zoning Ordinance to permit the construction/installation of a dwelling unit less than 600 square feet. The property is identified as Map 113 Lot 057 and is located on the corner of Bradford Road and Sunshine Avenue in the Rural (R) Zoning District.

Chairman Saccento opened the hearing. She then acknowledged Ms. Magnuson. Ms. Magnuson read her Administrative Review into the record, emphasizing that the lot was narrow, that the building would be a year-round dwelling unit under 600 square feet and that the Planning Board had been reluctant to change the current size restrictions on houses built in Newport; this was the only reason Mr. Mello was before the ZBA requesting a variance.

Mr. Ken Mello read his application into the record.

He stated that the septic was installed, inspected and was already approved by the State for a three bedroom house.

Mr. Kessler stated that only the size of the building was in question and before the ZBA. Does the Board see the rationale on the size of the building and does it meet the criteria of the variance?

There was a general discussion on the building and the lot by the Board.

Chairman Saccento then closed the meeting to the public. On a motion by Mrs. Cassorla, seconded by Mr. Kessler; ***the Board voted to go into Deliberations. The motion passed 5-0-0.***

Variance Statement of Reasons and Discussion

Chairman Saccento asked for motions on questions one through five.

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

Granting the variance would not be contrary to the public interest because it fits the lot and area.

Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

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

The spirit of the ordinance would be observed because it would be no rationale for a minimum square foot house. When the verbiage was discussed, the motion was amended to: ***The spirit of the ordinance would be observed because it would be no reasonable rationale for a minimum square foot house.*** Mrs. Cassorla seconded the amended motion. There was a short discussion on the size of houses and sheds and what was needed to acquire an occupancy permit. Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

On a motion by Mrs. Cassorla, seconded by Mr. Nelson; that:

Granting the variance would do substantial justice because it would allow the tract of land to be habitable. Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

On a motion by Mrs. Cassorla, seconded by Chairman Saccento; that:

The values of the surrounding properties would not be diminished because the house is not outside the realm of what is already existing in the neighborhood. Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

Unnecessary hardship

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:

On a motion from Mr. Kessler, seconded by Mrs. Cassorla; ***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 Newport ordinance does not provide a valid reason restricting house size.***

AND:

that the proposed use is a reasonable one because it is a residential unit in a residential neighborhood.

The Chair then called for a vote. ***The motion passed 5-0-0.***

Chairman Saccento called for a motion to memorialize the decision of the ZBA to grant the variance. On a motion by Mr. Nelson, seconded by Mr. Kessler; ***the Board voted unanimously to grant a Variance for Case #1053 as presented.*** Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

Case #1054: Heath Edwards (Owner) and John Catsam DBA/Newport Golf Club (Agent) request a Variance to the terms of Article IV Section 412.6 to allow the placement of a commercial sign in the Single Family (R-1) Zoning District. The property is identified as Map 116 Lot 011 and located at the Southwest corner of Unity Road and John Stark Highway.

Chairman Saccento opened the hearing. She then acknowledged Ms. Magnuson. Ms. Magnuson read her Administrative Review into the record.

Ms. Magnuson stated that the signage section of the zoning ordinances had been revamped for 2017. The main issue before the ZBA for the case was: the area is zoned single family residential. Does the ZBA want to allow a commercial business sign in a single family residential zoning district?

Chairman Saccento acknowledged the applicant. Mr. John Catsum read his application into the record. He stated that he had had many customers over the years state they had not been able to find his business due to ineffectual signage. Mr. Catsum had contacted Mr. Heath Edwards, owner of the land on the southwest corner of the intersection and had acquired permission to put up a 2'x3' sign when he had a variance granted by the ZBA.

There was a general discussion on the merits, location and size of the lot and aspects of the proposed sign. Board members asked:

Would the sign be single or double sided? They were told double sided. Board members and Mr. Catsum discussed the current (blue) state signs on John Stark Highway and how ineffectual they have been. What would the sign look like? They were told it would be 2'x3', with the Newport golf logo. It would say: Newport Golf Club ½ mile (with an arrow).

There was further discussion among the Board and Ms. Magnuson.

Mr. Catsum stated he had come to the ZBA to be "above board".

There being no further questions or comments from the applicant or Board members, Chairman Saccento closed the meeting to the public. On a motion by Mr. Nelson, seconded by Mrs. Cassorla; ***the Board voted to go into Deliberations. The motion passed 5-0-0.***

Variance Statement of Reasons and Discussion

The Chair's only question was if he (Mr. Catsum) already had two state signs why he would need another sign. There was a discussion among the Board on erecting the signs in the area.

Chairman Saccento asked for motions on questions one through five.

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

Granting the variance would not be contrary to the public interest because: there is a sign already on the property and it cannot be built on (for a residence). Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

On a motion by Mrs. Cassorla, seconded by Mr. Nelson; that:

The spirit of the ordinance would be observed because: A. The lot was unbuildable and B. it would allow a business that doesn't have a presence on the main street to direct patrons to their business.

There was a general discussion on allowing a sign at the location and the rule for having a variance request fail. Chairman Saccento called for a vote. ***The motion passed 4-1-0 (Saccento voted no).***

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

Granting the variance would do substantial justice because the lot was unbuildable and there was already one permitted sign there and it would be in the public's interest to direct them to the business. Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

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

The values of the surrounding properties would not be diminished because the lot is unbuildable and the lot is wooded and sheltered from the abutting residence. You can't see the sign from the residential lot. Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

Unnecessary hardship

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:

On a motion from Mr. Kessler, seconded by Mrs. Cassorla; ***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 already a sign there that the ZBA has approved.***

AND:

That the proposed use is a reasonable one because there is already a sign there and it will support a local business. Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

Chairman Saccento called for a motion to memorialize the decision of the ZBA to grant the variance. On a motion by Mrs. Cassorla, seconded by Mr. Kessler; ***the Board voted unanimously to grant a Variance for Case #1054 to allow the placement of a commercial sign in the Single Family (R-1) Zoning District. The sign is to be a 2'x3' sign that is visible from both sides and not within the State right-of-way. The motion passed 5-0-0.***

Mr. Catsum thanked the ZBA. The ZBA congratulated Mr. Catsum on his granted variance.

On a motion by Mrs. Cassorla, seconded by Mr. Kessler, ***the Board voted to adjourn at 7:57 p.m. The motion passed 5-0-0.***

Respectfully submitted,

Maura Stetson, Scribe

Approved: October 26, 2017