

Zoning Board of Adjustment
January 25, 2018 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

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

VIDEOGRAPHER: NCTV

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

COMMUNITY MEMBERS PRESENT: Michael Garcia (abutter), Racquel Symkowicz (abutter)

CALL TO ORDER: Chairman Saccento called the meeting of the ZBA to order at 6:36 p.m. and introduced the sitting Board members.

ADMINISTRATION: none

MINUTES: November 30, 2017

November 30, 2017

On a motion by Mrs. Cassorla; seconded by Mr. Nelson; *the Board voted to approve the minutes of the November 30, 2017 meeting as presented. The motion passed 3-0-2 (Kessler and Nelson abstained).*

Chairman Saccento reviewed the ZBA format for the public and applicant present.

NEW BUSINESS:

Case #1057: Calvin Fear (Owner) Michael Shklar (Agent): request a Variance as provided for in Article II Section 206.1 of the Zoning Ordinance to permit the construction of a seasonal camp/home less than 600 square feet. The property is identified as Map 247 Lot 005 and is located at 52 Chestnut Road 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. She cited three previous variance requests for tiny homes that had been granted by the ZBA in the last two years.

Chairman Saccento acknowledged Mr. Shklar and asked that he read the application into the record. Mr. Shklar addressed the Chairman explained why the owner, Mr. Fear was not in attendance. Mr. Fear sent his apology for his absence at the meeting. Being an active Merchant Marine, he was not available to attend the meeting. His request for the variance was to be able to have a quiet retreat when he was not at sea. Mr. Shklar then read aloud Mr. Fear's application into the record.

Mr. Shklar reiterated that the Zoning Ordinance goal was to prevent substandard housing. This was not a problem in this case. He referred to the addendum showing the kit home Mr. Fear was proposing to build.

Mr. Shklar gave additional information advocating tiny buildings.

Ms. Magnuson also stated that with previous applicants who had been granted a variance there has been a memorandum of understanding between the applicant and Town that when they applied for a building permit for a permanent home they would abandon the use of their tiny home. She explained how the agreement would work.

Additionally, Mr. Shklar addressed the Board and stated that the previous illegal uses that Ms. Magnuson referred to did not include Mr. Fear. The instances happened before Mr. Fear purchased the property. Ms. Magnuson concurred with Mr. Shklar's statement. She added that Mr. Fear has been in contact with the Planning and Zoning Office and has tried to abide by all of Newport's ordinances since purchasing the property.

Chairman Saccento addressed the Board members and asked if they had questions. Mr. Kessler asked Ms. Magnuson if sewer and water would be handled by the building permit as well as the occupancy permit. Ms. Magnuson stated that was correct. She gave a further explanation of the requirements of a building permit. Mr. Shklar gave additional explanations.

Chairman Saccento addressed the abutters present and asked if they had questions or comments. Mr. Michael Garcia addressed the Chair and stated he lived next to the property in question. After speaking with Mr. Shklar he did not have any objections. He was looking forward to meeting Mr. Calvin Fear; it was the reason he had attended the meeting, but also to understand the ZBA process.

Chairman Saccento acknowledged Mr. Ross Hudon. He was also an abutter and had come to the meeting to meet Mr. Fear. He had no concerns.

Mr. Shklar addressed the Chair and stated he had contact information and would get Mr. Garcia, Ms. Symkowicz and Mr. Hudon in touch with Mr. Fear.

There were no further questions by the Board members.

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.***

Chairman Saccento explained the rules of Deliberation to the applicant and abutters.

Variance Statement of Reasons and Discussion

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 it is in a rural setting and is consistent with previous action by this Board (ZBA). 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 it will be a part time seasonal dwelling with the plan to build a more permanent structure in the future. There was no discussion on the question. Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

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

Granting the variance would do substantial justice because we (ZBA) have granted similar variances for similar structures in similar locations. Mr. Nelson asked Ms. Magnuson (although it did not apply to this case) how the Town limited the number of people in a dwelling. There was a lengthy discussion and

explanation on the point. Ms. Magnuson then gave additional information about tiny houses. Mr. Nelson stated that the Planning Board has been slow to make a decision on tiny houses. Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

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

For the following reasons, the values of the surrounding properties would not be diminished because this is a rural area and this will be a somewhat temporary dwelling with plans to put in a permanent structure at a later date. The abutters that are here (at the ZBA meeting) are not concerned either. 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 Mrs. Cassorla, seconded by Mr. Nelson; ***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 house size rule is to prevent substandard housing. This is a kit house that will follow all codes and DES and state highway***

AND:

that the proposed use is a reasonable one because of the rural nature of the area. It won't be different from what is in the area. Mr. Nelson asked if they knew where it was going to be on the property. Mr. Kessler, Chairman Saccento stated that there was a pad already in the area. It is back from the road and would not be very noticeable. Ms. Magnuson stated it only had to meet the setbacks for the Rural Zoning District. She gave them to the Board. The Chair then called for a vote. ***The motion passed 5-0-0.***

Chairman Saccento asked for any conditions to granting the variance. Mr. Kessler stated they had to meet the requirements of the building code. There was a general discussion of what the building code encompassed and what a granted variance covered.

Ms. Magnuson asked that the ZBA put a time limitation to put up the seasonal building; usually it is two years. There was a general discussion on this as well as how to state the memorialization.

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 as provided for in Article II Section 206.1 of the Zoning Ordinance to permit the construction of a seasonal camp/home less than 600 square feet. The property is identified as Map 247 Lot 005 and is located at 52 Chestnut Road in the Rural (R) Zoning District with the condition that all building codes are met and the owner has twenty-four months from this date (January 25, 2018) to build and receive a CO (occupancy permit) for the dwelling.*** Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

The Notice of Decision would be drawn up within five (5) business days and signed by Chairman Saccento of the ZBA.

Mr. Kessler asked that Ms. Magnuson inform the Planning Board (PB) that the ZBA has granted a variance four times in the last two years for the building of a small house and that they (PB) might want to reconsider their opinion on small houses. Ms. Magnuson stated that she would inform the Planning Board of the ZBA's actions and their request.

There being no further business, on a motion by Mrs. Cassorla, seconded by Mr. Nelson; *the Board voted to adjourn at 7:15 p.m. The motion passed 5-0-0.*

Respectfully submitted,

Maura Stetson, Scribe

Approved: March 20, 2018