

**Zoning Board of Adjustment**  
**April 26, 2018 6:30 PM**  
**Board of Selectmen's Room/Municipal Building**  
**15 Sunapee Street/Newport, NH**

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

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

**VIDEOGRAPHER:** Nancy Meyer, NCTV

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

**COMMUNITY MEMBERS PRESENT:** Sid Gobin, Charles Shirosky, Jason Avery

**CALL TO ORDER:** Chairman Saccento called the meeting of the ZBA to order at 6:30 p.m. and introduced the sitting Board members.

**ADMINISTRATION:** none

**MINUTES:** March 22, 2018

March 22, 2018

On a motion by Mr. Kessler, seconded by Mr. Lain; *the Board voted to approve the minutes of the March 22, 2018 meeting as presented. The motion passed 3-0-1 (Cassorla abstained).*

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

Chairman Saccento stated that since there were seven cases to be heard at the meeting, the applicants would not need to read their applications into the record, the applications would be added to the minutes on file. Chairman Saccento stated that an applicant for each case would be asked to present their case to the Board.

**NEW BUSINESS:**

**Case #1059: Tim & Michelle Parenteau (Owners):** request a Variance from the terms of Article II Section 206.5 (D) of the Zoning Ordinance to reduce the distance between separate buildings. The property is identified as Map 260 Lot 012 and is located at 526 Unity Road in the Rural (R) Zoning District.

Chairman Saccento opened the hearing. She then acknowledged Ms. Magnuson.

*Mr. Ben Nelson, Board member, arrived at the meeting at 6:35 p.m. and took his seat at the ZBA table.*

Ms. Magnuson read her Administrative Review into the record. A suggested condition by Fire Chief Conroy was putting up fire resistant sheetrock on the garage wall. She stated that staff had no concerns with the application.

Addressing the ZBA members, Ms. Magnuson stated that there was a distance requirement and the applicants would like to reduce that. In their packets the Board members had received a diagram of where the home is and a diagram of the driveway.

Mr. Tim Parenteau stated that they had always had a shared driveway. Mr. Kibbey had a right of way through it. The only difference with the case is that they would like to purchase a sixteen foot wide by eighty foot long mobile home. He explained where they would like to place the home and why. He had spoken to Ms. Magnuson and had purchased the fire resistant sheetrock; he hasn't put it up yet. Continuing, Mr. Parenteau explained their use of the garage.

Chairman Saccento asked if there were questions of the Board members.

Ms. Magnuson stated that when the Board went through Deliberations, she strongly suggested that they discuss each of the points that the applicants presented in their application. She wanted to make sure that they discussed each prong of the application criteria. Chairman Saccento thanked her.

There was general discourse by Mr. Nelson and Mrs. Cassorla about the distances. Mr. Kessler asked the applicants why they did not want to move the mobile home closer to the road. Mr. Parenteau stated because they would not be in compliance with the Newport Zoning Ordinance. There was a general discussion on the proposed placement of the mobile home.

Abutter Sid Gobin addressed the Board and stated he was in favor of granting the Variance Tim and Michelle Parenteau were requesting.

There were no further questions by the Board members.

Chairman Saccento then closed the meeting to the public. On a motion by Mr. Kessler, seconded by Mr. Nelson; ***the Board voted to go into Deliberations for Case #1059. The motion passed 5-0-0.***

Chairman Saccento explained the rules of Deliberation to the applicants.

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

Chairman Saccento asked for motions on each of the five questions (prongs).

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

***Granting the variance would not be contrary to the public interest because the reduction in the span of buildings would not be noticeable to the public and concerns about possible fire are being addressed by the landowner.*** It was stated that there was plenty of room for access for emergency vehicles and personnel. Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

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

***The spirit of the ordinance would be observed because there will still be plenty of access for emergency vehicles and personnel and the fireproof sheetrock is part of the purview.*** There was a general 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 it would improve the property owner's property and it would improve the appearance of the entire neighborhood.*** There was no discussion. Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

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

***For the following reasons, the values of the surrounding properties would not be diminished: because it (mobile home) will be newer and bring up the value of the neighborhood.*** During discussion it was stated that no one will complain if the home is too close to the garage. 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 distance between the garage and the house isn't going to be visible from other properties***

AND:

***that the proposed use is a reasonable one because it is an upgrade to the property as well as the neighborhood. The motion passed 5-0-0.***

There was a general discussion on how to state the memorialization. Ms. Magnuson recommended that the ZBA, in their motion, make the condition of putting up fireproof sheetrock as it was a suggestion of the Fire Chief and was stated throughout the application that the applicant would do this.

There was a general discussion on fire safety and the ZBA's purview on it. Ms. Magnuson stated the ZBA had the authority to impose it.

Chairman Saccento called for a motion to memorialize the decision of the ZBA to grant the variance. On a motion by Mr. Kessler, seconded by Mrs. Cassorla; ***the Board voted unanimously to grant a Variance for Case #1059 as presented with the condition that the wall of the garage facing the mobile home has fire resistant sheetrock.*** Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

Chairman Saccento addressed the Parenteaus and stated their Variance was granted.

Ms. Magnuson addressed the Parenteaus and stated that The Notice of Decision would be drawn up within five (5) business days and signed by Chairman Saccento of the ZBA. Ms. Magnuson also explained to the Parenteaus that there was a 30 day appeal period for a Zoning decision.

**Case #1060: Linda Coelho (Owner):** requests a Variance from the terms of Article II Section 206.5 of the Zoning Ordinance to reduce the depth of a front yard to build a garage. The property is identified as Map 230 Lot 002 and is located at 412 Maple Street 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 stated that her staff had no concerns with the application.

Chairman Saccento acknowledged Ms. Coelho and asked that she present her case into the record. Ms. Coelho stated that Mr. Scott Sayce would present the case.

Mr. Sayce stated the applicant was planning on constructing a 20' by 14' garage with a full slab foundation. The setback to the present well was 5'.

Mr. Kessler asked if there was a setback for a well. Ms. Magnuson stated it was a DES rule and there was a 75' protective radius. Ms. Magnuson did not know if there was an exact distance to property lines; but there was between a well and a septic system.

There was general discussion on the placement of the garage.

There were no abutters present for the case.

There were no further questions or comments by the Board members.

Chairman Saccento then closed the meeting to the public. On a motion by Mr. Lain, seconded by Mr. Nelson; ***the Board voted to go into Deliberations for Case #1060. 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 Mr. Kessler; that:

***Granting the variance would not be contrary to the public interest because it is far enough off the road so as not to be a hazard.*** Mrs. Cassorla stated that there were plenty of structures in Newport that are even worse than this setback. Mr. Nelson concurred. 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 would not detract from the character of the neighborhood by putting the garage into the front setback.*** 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 Mrs. Cassorla; that:

***Granting the variance would do substantial justice because it would enhance the value of the property and the neighborhood.*** Mrs. Cassorla stated the property owner would also be able to use the driveway and place the garage where it is proposed. Chairman Saccento concurred. Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

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

***For the following reasons, the values of the surrounding properties would not be diminished because the garage is in keeping with what you would expect on residential property.*** Chairman Saccento stated she did not believe the proposed garage changed anything about the neighborhood; it will still be residential. 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 of the location of the well and the layout of the driveway. This is the most logical place***

AND:

*that the proposed use is a reasonable one because this is as conforming as it can be within the setback. The motion passed 5-0-0.*

There was a general discussion on the hardship question 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. Nelson; ***the Board voted unanimously to grant a Variance for Case #1060 from the terms of Article II Section 206.5 of the Zoning Ordinance to reduce the depth of a front yard to build a garage from 50' to 35.5'***. Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

Chairman Saccento addressed Ms. Coelho and Mr. Sayce and stated their Variance had been granted.

Ms. Magnuson addressed the applicants and stated that The Notice of Decision would be drawn up within five (5) business days and signed by Chairman Saccento of the ZBA. Ms. Magnuson also explained to Ms. Coelho that there was a 30 day appeal period for a Zoning decision. Ms. Coelho will also need to apply for a building permit for the garage.

**Case #1061: Christopher Martin (Owner):** requests a Variance from the terms of Article II Section 207 of the Zoning Ordinance to build a 2 family duplex for senior independent living. The property is identified as Map 115 Lot 023001 and is located at 2 Pine Street in the Single Family (R-1) Zoning District.

Chairman Saccento opened the hearing. She acknowledged Ms. Magnuson. Ms. Magnuson read her Administrative Review into the record. She stated that staff had no concerns with the application.

Chairman Saccento acknowledged Mr. Martin and asked that he present his case.

Mr. Chris Martin introduced himself and stated that his proposal is to build a single structure building (two family duplex) on the one acre lot. He then read his application into the record.

Chairman Saccento asked if there were any other two family dwellings in the neighborhood. Ms. Magnuson was not aware of any duplexes in the neighborhood. There is Woodlawn further down on Pine Street.

There was a short discussion among Board members and Ms. Magnuson about the private residential school on Elm Street.

Mr. Kessler asked if the proposed duplex would be considered a convalescent or rest home. Mr. Martin explained to Mr. Kessler that Case #1062 asking for a special exception, would be for that purpose.

Mr. Kessler asked Ms. Magnuson for clarification as to why Mr. Martin needed both a variance and a special exception. Ms. Magnuson explained that the variance was for the structure being a duplex. The convalescent home was for the use. The ZBA could say yes we want you to build a single family home with an ADU; the ZBA could then approve the convalescent use. The two cases were completely different.

For clarification, Mr. Kessler stated that the variance created the duplex that could be rented to anyone. Ms. Magnuson agreed and stated that that was the reason for the two separate cases. Mr. Martin stated that was his understanding as well.

Mr. Nelson asked if Mr. Martin was subdividing off a lot from the Franz property. Mr. Martin stated it is already subdivided. Mr. Nelson asked if there would be a separate driveway off of Pine Street. Mr. Martin said yes. He showed the ZBA members a copy of the proposed plot plan.

Chairman Saccento asked Mr. Martin to explain his plans for the trees on the property. Mr. Martin stated that the whole acre is currently trees. Trees will be left to block the abutting cemetery and neighboring houses. He stated the neighborhood lots had trees on them; he hoped to duplicate this image along their property line.

Mr. Kessler asked if each side of the duplex was single family. Mr. Martin agreed. Mr. Kessler pointed out a typo on the floor plans Mr. Martin had provided. Three of the rooms in each home was labeled a bedroom. Mr. Martin made the following correction to the floor plans: there are two bedrooms. The large open area (12' x 22') should be labeled living room.

Continuing, Mr. Martin reiterated that it was all single level and handicap (ADA) accessible. He stated that the house would be on a slab with a heated garage (attached) for each dwelling. He believed they did not need frost walls (a building code issue).

Chairman Saccento asked if there were any abutters at the meeting. There were none.

Mr. Nelson asked if the small room in the garage was for utilities. Mr. Martin said yes. He explained what it would house. Ms. Magnuson informed the Board they were getting into building code questions. The Board members expressed that their previous questions were out of curiosity only.

There were no further questions or comments by the Board members.

Chairman Saccento then closed the meeting to the public. On a motion by Mr. Kessler, seconded by Mr. Lain; *the Board voted to go into Deliberations for Case #1061. The motion passed 5-0-0.*

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

Chairman Saccento asked for motions on questions one through five.

Mr. Nelson stated he was very comfortable with the intended purpose. He asked if the ZBA passed the special exception as well if it would it go with the land (forever) as a convalescent home. Mrs. Cassorla added more, asking if Woodlawn stopped using it would it always be a convalescent home. Chairman Saccento stated the ZBA would discuss that in Case #1062.

Ms. Magnuson clarified the state rule dealing with their concerns: if the use was not continued for a period of time consisting of more than 12 months, then the land reverted back to its original use. In other words, if the duplex was not used as a convalescent home for more than 12 months, their decision would go away; an applicant would need to go back to the ZBA and reapply for a special exception. It would become a duplex in a single family neighborhood.

Therefore, the ZBA members wanted to consider the cases separately. There was a general discussion on all aspects of the case.

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

***Granting the variance would not be contrary to the public interest because with the duplex and R-1 it is small and unobtrusive and will not be a huge impact.*** Chairman Saccento stated that if there was a condition of a tree buffer then it is not visible. Ms. Magnuson gave an example of a ZBA case (business abutting a single dwelling) in which a tree buffer was made a condition. Mr. Kessler stated that in Case #1061 the ZBA was discussing residential to residential. He did not want to impose a tree buffer. There was a short discussion on this. 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 the new construction of the duplex, although will not look like a single family home will not be outside the character of the neighborhood.*** 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 Mrs. Cassorla; that:

***Granting the variance would do substantial justice because the structure would fit in with the other structures in the neighborhood and is on a large lot.*** Chairman Saccento concurred. Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

Mrs. Cassorla asked if there was anything currently on the lot. She was told that it was currently a vacant lot.

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

***For the following reasons, the values of the surrounding properties would not be diminished because it would be new construction adding value to the neighborhood and filling in a vacant lot.*** Chairman Saccento stated it would not be visible from the road. She then 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; ***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 appearance will fit in with the neighborhood***

AND:

***that the proposed use is a reasonable one because between the school and the nursing home there are already multi-occupant properties in the neighborhood.*** Mr. Nelson stated it looked like a long ranch and there are ranches in the area. Mrs. Cassorla concurred. Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

On a motion by Mrs. Cassorla, seconded by Mr. Nelson: ***the Board voted to grant a Variance for Case #1061 from the terms of Article II Section 207 of the Zoning Ordinance to build a 2 family duplex for senior independent living.*** Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

Ms. Magnuson addressed Chairman Saccento and asked since there were no conditions that she sign the Notice of Decision at the meeting. Mr. Martin was given his Notice of Decision for Case #1061.

**Case #1062: Christopher Martin (Owner):** requests a Special Exception as provided for in Article II Section 207.2 of the Zoning Ordinance and specifically the provision to permit the use of a convalescent

or rest home. The property is identified as Map 115 Lot 023001 and is located at 2 Pine Street in the Single Family (R-1) Zoning District.

Chairman Saccento opened the hearing. She then acknowledged Ms. Magnuson. Ms. Magnuson read her Administrative Review into the record. She stated that staff had no concerns with the application.

Chairman Saccento acknowledged Mr. Chris Martin and asked him to present his case. Mr. Martin stated that they planned on using the duplex as a convalescent or rest home. It will be independent living facility.

The tenants would receive the following care: maintenance, housekeeping and transportation services.

Licensure does not allow nursing care at the duplex. VNA services would be allowed. Independent living for handicapped and non-handicapped individuals would be provided.

Water and sewer would be public (Town).

For clarification, Chairman Saccento stated that the ZBA was strictly considering the use of the property for the requested special exception.

Chairman Saccento addressed Mr. Martin and stated for clarification that he could not have nursing staff at the duplex but VNA could go to the clients. Mr. Martin stated yes and explained the difference between assisted living and independent living. Various scenarios involving different care were discussed.

The Chair asked if there were questions from the public. There were no abutters in attendance.

Chairman Saccento asked if there were follow-up questions from the Board.

There being no further questions from the public or Board, on a motion by Mrs. Cassorla, seconded by Mr. Nelson; ***the Board voted to go into deliberations. The motion passed 5-0-0.***

#### **Zoning Board of Adjustment Special Exception**

Chairman Saccento addressed the Zoning Board members and asked them to go through the three questions.

Mr. Nelson stated:

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 passed 4-0-0.***

Chairman Saccento stated

The proposed use will not be injurious, noxious or offensive or in any way detrimental to the neighborhood ***Standard B has been met.***

Standard C: 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.

On a motion by Mr. Kessler, seconded by Mr. Nelson; ***the Board voted to approve the Special Exception for Case #1062 as provided for in Article II Section 207.2 of the Zoning Ordinance and specifically the***

*provision to permit the use of a convalescent or rest home and that Standards A, B and C have been met.* Chairman Saccento called for a vote. *The motion passed 5-0-0.*

Chairman Saccento addressed the applicant and stated his application for a Special Exception had been approved (with no conditions). She signed the two Notices of Decision at the meeting.

**Case #1063: Michelle & Kevin Widmer (Owners):** request a Special Exception for Mixed Use as provided for in Article IV, Section 413 of the Zoning Ordinance to permit a home business. The property is identified as Map 218 Lot 015 and located at 18 Allen Street in the Rural (R) Zoning District.

Chairman Saccento opened the hearing. She then acknowledged Ms. Magnuson.

Ms. Magnuson stated there was an error with the application; the applicants had filled out the criteria for a special exception, not for a mixed use special exception. The criterion for each was the same.

Addressing the Board, she stated that if they discussed each of the prongs on the Mixed Use worksheet they would be fine. Continuing, Ms. Magnuson stated that she had given them the criterion for a home business as her Administrative Review. All criteria for a home business needed to be met; thus the check boxes on their sheets. She reminded the ZBA to discuss both the regular worksheet for mixed use and also the home business worksheet.

Chairman Saccento acknowledged Mrs. Michelle Widmer and asked that she present her case.

Mrs. Widmer addressed the ZBA and stated that they were asking for a mixed use for a home business for a distillery that she and her husband run out of the basement level of the house.

Mrs. Widmer stated it was out of sight of the neighbors. It produced no noise or offensive odors. She said the neighborhood will have no detrimental impact. There will be no signage.

They were expecting to have quarterly tastings with maybe six people to verify the recipes they had produced. There will not be any unhealthful waste.

Mr. Kevin Widmer addressed the ZBA and explained how he made bourbon at their home and what they did with the wastes.

Mrs. Widmer stated they would also be making essential oils that would be sold at her office. Everything they used would be recycled.

Chairman Saccento asked if they stored the used corn until the farmer picked it up. Mrs. Widmer stated it is a one day turnaround. The farmer supplied the barrels; they filled them and the farmer picked them up.

Mr. Widmer indicated the size of the barrels and stated the farmer picked them up approximately every two-three weeks.

Chairman Saccento addressed the applicants and stated they were already doing it. They said yes. Mrs. Widmer stated it was not illegal to make alcohol in NH. They wanted to turn it into a

business. They wanted to get their licensure so that they could sell it. Their future (plans) was to grow and expand and open a distillery where they could do samplings.

Chairman Saccento asked what the volume was. Mr. Widmer stated their licensure will be for less than 500 barrels.

Chairman Saccento asked how many gallons that would be. She was told forty gallons per barrel.

Mr. Widmer again gave a revised version of how they produced their bourbon. He stated that from the forty gallons in the barrel they will get about six gallons of liquor.

Chairman Saccento asked what the remaining thirty four gallons was. Mr. Widmer stated it was water. Chairman Saccento asked how they disposed of the water. Mr. Widmer told her by his septic system.

Chairman Saccento asked if for state licensure they needed to have adequate septic. Chairman Saccento asked if they needed a special septic for the business. She explained her dealing with the state with a home business dealing with food.

Mrs. Widmer said there were 14 requirements for the state; septic was not one of them.

Mr. Widmer stated he had put in a 1,500 gallon septic when he had bought the farm. So the septic was oversized for the dwelling. Chairman Saccento asked how many bedrooms there were in the house. She was told three.

Ms. Magnuson and Mrs. Cassorla stated that 1,500 gallons was the standard requirement for a three bedroom house.

Mr. Widmer stated that if they distilled once a week, they dumped 6 gallons of water or approximately 24 gallons a month.

Chairman Saccento asked how much water they were using. Mrs. Widmer stated they started with 50 gallons in a holding tank. She and Mr. Widmer then explained the process and equipment they used.

There was a discourse on distilling by Mr. Widmer.

Mrs. Widmer explained the use of the local ingredients. She said they bought approximately one ton of fruit a month. She also reviewed a bit of their bottling process.

Mrs. Saccento asked if the water for cleaning and bottling was included in their estimate of water usage. Mr. Widmer stated it included it.

Mrs. Widmer stated they needed the approval of the Town in order to move forward. Their plan was to start in the basement and then grow and move to a new location.

Chairman Saccento asked if they had employees. Mrs. Widmer stated they had two on hold.

Chairman Saccento asked where the water came from. She asked if it was from a private well.

Mrs. Widmer stated that it was water they paid for. Mr. Widmer stated it came from a spring. He then explained that the creamery was a part of their home. It sat on top of the spring on the corner of Cary Street and Rte. 10. When the creamery was moved, the spring was capped and it became the communal well for the 12-14 houses in the neighborhood.

Mrs. Cassorla addressed the Widmers and stated that NH state law allowed distilling alcohol. They were using this to springboard their business. She asked if production was going to increase at the home, or remain the same.

Mrs. Widmer stated it would stay the same. They did not have to increase it.

Mr. Widmer stated that you can't drink alcohol right away. It needed to be racked and aged. All they have been doing is producing, racking and aging. Currently some were 9 months old.

For clarification, Mrs. Cassorla asked if they get the Special Exception, if their production would increase. She was told no. Mr. Widmer explained their vision with the business.

Chairman Saccento asked if everything for the business would be stored in the basement and not outside. Mrs. Widmer stated absolutely.

Chairman Saccento again asked about additional deliveries. Mrs. Widmer stated they would not have more. If that happened, she would have deliveries sent to her business on Main Street.

Mr. Widmer addressed the ZBA and stated they try and keep their purchases of produce (for the home business) local. They purchase 2-3 shopping carts at a time and at a variety of stores.

There was an abutter and individual from the neighborhood in attendance.

Mr. Jason Avery, abutter and manager of the neighborhood well (owned by Pinnacle Water Resources) addressed the Chair and ZBA members. He stated that he had known Mr. and Mrs Widmer for a long time. He was struggling with part of their proposal. He had to look at it from two different angles: as a property abutter; there will be a zoning change. Once the zoning is changed it is changed forever. If they were doing it as a hobby that was great. If the hobby was going to grow and become a business that was a reason for concern. If they grow and move on, the zoning will stay changed forever and has a long term effect. The property has been there for a while and that will be an issue.

Mr. Avery had consulted with a friend about the distillery business. He had been told that for a beer distillery they had had to have a separate septic system with test pits and monitoring. What Mr. and Mrs. Widmer were doing was changing the zoning and Mr. Avery had to think of it as a grown business; was there a danger of environmental issues. The selling the corn waste to a farmer was one thing to consider.

Mr. Widmer interrupted Mr. Avery. Chairman Saccento addressed Mr. Widmer and told him he would have a chance to rebut.

Continuing, Mr. Avery stated that if they were dumping waste down the septic system, it was a concern because the runoff from the farm goes across one of his fields.

Mr. Avery stated the second concern was where they were getting the water and the amount they will use. If they use 40 gallons of water to get 6 gallons of alcohol; that is 34 gallons of waste. If they were producing 500 gallons that will produce a lot of wasted water. Mr. Avery explained it was water coming from the (communal) well that feeds 17 houses. The well water that the Widmers are using is tested and safe.

Ms. Magnuson addressed Mr. Avery and asked that he explain the well, the ZBA was not familiar with it. Mr. Avery complied, stating that the well used to serve the creamery. After the creamery was gone, the Whipples bought the land and well, subdivided the land, and used the well to provide water to the houses. The well still is providing water to the residences in the neighborhood.

Mr. Avery explained there was a certain amount of regulation that went along with the well. One of his concerns with the well is the water usage. He explained the normal water usage from the well. Chairman Saccento asked what the flow rate was for the well. He did not have the figures of the flow rate; he gave the recovery figures to the Board. The well pumped out approximately 1,700 gallons a day. It was owned by Pinnacle Water Resources.

Mrs. Widmer started asking a question of the Chair. Chairman Saccento stated Mr. Avery still had the floor.

Mr. Avery stated that the owner of Pinnacle Water Resources was not in attendance. He was the operator of the well. He had the DES licensing. He dealt with the well and operations. He was in attendance at the meeting as the owner's representative.

Mr. Avery explained the water usage, the properties under the DES testing purview and how increased usage affects the DES testing that he does. His concern was of the well, the capacity and the well's capabilities in feeding the neighborhood. The DES actually has the ability to come and limit the amount of water used by the communal well.

Therefore, the Widmers have to work out their water usage with the owner of the well; how many gallons they will use. It is currently unmetered water.

Concluding, Mr. Avery reiterated his concerns:

- ❖ The well
- ❖ The impact
- ❖ The Widmers having to work out water usage with the owner of the well
- ❖ The well is for residential household use, not business
- ❖ As an abutter, having this zoning change in a residential neighborhood

Chairman Saccento asked if there were questions from the Board.

Mr. Nelson stated he did not know if water was in the ZBA purview; it is not a zoning issue.

Mrs. Cassorla stated that was why she asked if their production would increase. There would be an additional draw on natural resources if it was increased.

Chairman Saccento stated that was why she had asked if the state licensing was getting involved with the septic system. For other food production they do. She considered it odd that the state did not.

Mr. Widmer said that Mr. Avery had said that he had contacted an individual from a brewery. He said there was a difference between making beer and distilling. He explained the difference. He stated that the waste water was mainly grey water.

Mr. Widmer rebutted Mr. Avery's concerns stating:

- They were distilling once a week.
- Bottling will be done off site.
- He stated 12-14 gallons of water would be used per barrel.

The Widmers were asked about their tastings. Ms. Magnuson stated, for clarification, that they would not be having tastings at their home. She was told yes (they would).

Chairman Saccento asked, for clarification, if they would have a storefront at their home. They said no.

Mrs. Cassorla asked about the concern of changing the character of the neighborhood. Addressing Ms. Magnuson she asked if they did not use the distillery for 13 months if it reverted back to the present zoning. Ms. Magnuson stated that was correct.

Ms. Magnuson stated that retail sales would not be part of a home business approval. The ZBA might want to list that if there is a conditional approval.

Ms. Magnuson acknowledged Mr. Shirosky and asked if he was an abutter. Mr. Shirosky said that he lived in the neighborhood on Cary Street. He stated he wanted to know what the impact would be on the rest of the neighborhood if the special exception was approved. I know today day they will start small, but what is to say they want to expand. Mr. Shirosky stated they had water now, but that will be a large usage of water.

Mrs. Widmer stated their intention was not to grow the business on Allen Street.

Chairman Saccento stated, for clarification, that the Widmers would be okay if that was made a condition. She was told yes.

There was a discussion among the Board members about possible conditions.

Mr. Widmer expressed his visions for the future of their proposed business.

Mr. Kessler asked, for clarification, if they created and shared recipes of distilling. He was told only to home brewers. Mr. Kessler asked them to clarify how other brewers could use their recipes if they distilled a different way. Mr. Widmer talked about their own proposed processes.

The ZBA discussed the water usage. For clarification, Mr. Avery stated the two items of concern were: the amount of water the Widmers use and the effect it has on the well also the neighborhood impact. He asked why the necessity of changing the zoning if they would not be growing.

Mr. Widmer stated that it had to do with the state licensure.

1. They have to establish they have the place of business
2. The state will come in and inspect where they are, how they are doing it
3. It has to be in an approved place
4. Any additional things necessary, they will do
5. Finally, the licensure will come through

Chairman Saccento asked if yearly inspections would occur. Mrs. Cassorla stated yes.

Mr. Nelson asked if they were heating with propane. Mr. Widmer stated yes, it was a direct link to the house. He asked if the Fire Chief would have to sign off on.

Ms. Magnuson explained, stating if the state sent a request for an inspection then the Town office and Fire Chief would be notified.

Chairman Saccento asked how the property was secured. Mr. Widmer stated there currently was nothing. If the state required it they would put something in.

Mr. Avery stated that if the State was involved they would be very strict, identify issues that needed to be changed. Would it be fair to say that the special exception would be subject to the state's approval. He was told no. It had to start at the ZBA.

Chairman Saccento explained why it was necessary to start with the Town.

There was a discussion between the ZBA, Mr. Avery and Ms. Magnuson about the size of the business. Ms. Magnuson stated the home business will contain them. She suggested that the ZBA include the description of a home business (Section 413 Home Business) as a condition.

Mr. Widmer again spoke of the future of the business and their desire to open another distillery in Biloxi, Tennessee.

Mr. Kessler asked them what would be the next step after they got their business going. Mrs. Widmer stated that with state licensure they would be able to sell liquor at her storefront on Main Street. Their next step was to find a commercial place to go. Mr. Kessler asked them to explain where they would distribute their liquor. Mrs. Widmer gave general information.

Mr. Shirosky and Mr. Avery were asked if they had further questions. They said no.

There being no further questions from the public or Board, on a motion by Mr. Kessler, seconded by Mr. Nelson; *the Board voted to go into Deliberations. The motion passed 5-0-0.*

### **Zoning Board of Adjustment Special Exceptions-Mixed Use**

Chairman Saccento ensured that all ZBA members had the Special Exception-Mixed Use worksheet.

She then asked for a motion on Standard A.

A motion was made by Mr. Kessler stated that the selected site is an appropriate location for the proposed use because they are already doing it as a hobby and they are not going to be increasing production at all.

Standard B.

Mr. Kessler stated that adequate and safe highway access is provided to the proposed use because there is no intention of having customers come to the location.

Standard C.

Mrs. Cassorla stated that adequate method of sewage disposal is available at the proposed site because The amount of waste produced is so little and is disposed of through composting, a farmer or the septic system.

Standard D.

Mr. Kessler stated the proposal will not be detrimental, hazardous or injurious to the neighborhood because they haven't realized it has been going on already.

Standard E.

Mr. Kessler stated that the proposed use is consistent with the spirit of the Ordinance and the intent of the Master Plan because it is helping local business grow.

The ZBA members discussed adding conditions to the approval. Ms. Magnuson suggested they reference the home business (Section 413).

Chairman Saccento asked for a motion on a collective Standard A, B, C, D and E for Case #1063.

On a motion by Mr. Kessler, seconded by Mrs. Cassorla; **the Board voted to approve Case #1063 for Special Exception- Mixed Use as provided for in Article 4, Section 413 of the Zoning Ordinance to permit a home business of a distillery. The motion passed 5-0-0.**

Ms. Magnuson addressed Chairman Saccento and stated that the Notice of Decision for Case #1063 would be drafted within five business days with the conditions. The applicants would receive the original and she would keep one copy for their case file.

**Case #1064: 169 Sunapee Street, LLC (Owner) and Ronald K. DeCola (Agent)** request a Special Exception as provided for in Article II, Section 211.3 of the Zoning Ordinance and specifically the provision to permit the use of a Medical Facility in the existing mill building. The property is identified as Map 112 Lot 032 and located at 169 Sunapee Street in the Single Family (R-1), General Residential (R-2) and Industrial (I) Zoning Districts.

Chairman Saccento opened the hearing. She then acknowledged Ms. Magnuson. Ms. Magnuson read her Administrative Review into the record. She stated that much of her Administrative Review for Case 1064 will be similar for Case 1065. She addressed the ZBA members and stated it was a complicated zoning issue, but the ZBA was familiar with the property. Staff had no concerns with the application.

Chairman Saccento acknowledged Mr. Ronald K. DeCola and asked that he present his case. Mr. DeCola gave the Board the history of granted variances and approved special exceptions on the property. He stated that the LLC felt the need to diversify offerings at the Newport Mills. They want to serve the senior housing market. Currently they have a proposed 46 senior housing independent living apartments in the building. Everyday needs would be taken care of: recreational, housekeeping, occupational therapy and physical therapy.

Using a site plan of the building, Mr. DeCola identified various areas in the building. He stated various scenarios in which the medical facility would consist.

Chairman Saccento asked about handicapped living at the Mill. Mr. DeCola agreed they could, everything was ADA.

Mr. Kessler asked if the medical facility would be available for people not residents of the Mill. Mr. DeCola stated yes.

Mr. DeCola continued, showing the ZBA the improvements that his company will have done. There was a short discussion on the Mill being on the national historic district registry. Ms. Magnuson told the ZBA members that if the 79-E passed at Town Meeting, the Mill would be going before the BOS for a 79-E tax credit. The ZBA and Mr. DeCola discussed:

The number of apartments

The number of parking spaces

The added medical facility

Ingress and egress to the property, traffic flow

DOT for driveway: change of use (already completed)

There were no abutters in attendance.

Chairman Saccento asked if there were follow-up questions from the Board.

There being no further questions from the Board, on a motion by Mr. Nelson, seconded by Mr. Kessler; ***the Board voted to go into Deliberations. The motion passed 5-0-0.***

### **Zoning Board of Adjustment Special Exception**

Chairman Saccento addressed the Zoning Board members and asked them to go through the three questions.

#### ***Standard A:***

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; Mr. Kessler stated that ***Standard A has been met.*** Mrs. Cassorla and Chairman Saccento concurred. ***The motion passed 5-0-0.***

#### ***Standard B:***

Chairman Saccento stated that: The proposed use will not be injurious, noxious or offensive or in any way detrimental to the neighborhood; and that ***Standard B. has been met.***

#### ***Standard C:***

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.

On a motion by Mr. Kessler, seconded by Mr. Nelson; ***the Board voted to approve the Special Exception for Case #1064 169 Sunapee Street, LLC (Owner) to permit the use of a Medical Facility in the existing mill building as presented. The motion passed 5-0-0.***

Chairman Saccento addressed the applicant and stated his application for a Special Exception had been approved. She signed the two Notices of Decision for Case 1064.

**Case #1065: 169 Sunapee Street, LLC (Owner) and Ronald K. DeCola (Agent)** request a Special Exception as provided for in Article II, Section 211.3 of the Zoning Ordinance and specifically the provision to permit the use of a Restaurant in the existing mill building. The property is identified as Map 112 Lot 032 and located at 169 Sunapee Street in the Single Family (R-1), General Residential (R-2) and Industrial (I) Zoning Districts.

Chairman Saccento opened the hearing. She then acknowledged Ms. Magnuson. Ms. Magnuson stated her Administrative Review was the same as in Case 1064 except the facility is a restaurant. She repeated that staff had no concerns with the application.

Chairman Saccento acknowledged Mr. DeCola and asked him to explain his case. Mr. DeCola stated that as a part of the senior housing at the mill, renters could buy one or two meals on a plan. The company was speaking to a restaurant chain to take over the restaurant facility.

Mr. DeCola gave an overview of their proposed use of the restaurant in the mill building, renovations to the mill and deliveries.

Mrs. Cassorla asked if they were on Town water and sewer. Mr. DeCola stated yes.

Mrs. Cassorla asked what the parking requirement for the restaurant was. Mr. DeCola stated 27 spaces for the restaurant. They would need 83 spaces for everything they were proposing at the mill.

Mr. DeCola addressed the ZBA and stated possible plans for the future at the mill, including associations with either Summercrest or Sunapee Cove.

There were no abutters in attendance.

Chairman Saccento asked if there were follow-up questions from the Board.

There being no further questions from the public or Board, on a motion by Mrs. Cassorla, seconded by Mr. Lain; ***the Board voted to go into Deliberations. The motion passed 5-0-0.***

#### **Zoning Board of Adjustment Special Exception**

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 proposed use will not be injurious, noxious or offensive or in any way detrimental to the neighborhood; ***Standard B. has been met.***

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.***

On a motion by Mr. Kessler, seconded by Mrs. Cassorla; ***the Board voted to approve the Special Exception for Case #1065 169 Sunapee Street, LLC to permit the use of a restaurant in the existing mill building.***

Mr. DeCola asked the Board, before they voted, if they could add verbiage concerning the timeframe to complete the construction. He asked for 24 months and explained why.

Ms. Magnuson stated that the additional time had not been asked for case 1064. It could not be changed. They would need to specify the 24 months for this case in order to add to the timeframe for case 1065. There was a discussion as to the timeframe.

The motion was amended to state:

On a motion by Mr. Kessler, seconded by Mrs. Cassorla; ***the Board voted to approve the Special Exception for Case #1065 169 Sunapee Street, LLC to permit the use of a restaurant in the existing mill building with a timeframe to start construction within 24 months. The motion passed 5-0-0.***

Mr. DeCola thanked the ZBA members.

Chairman Saccento signed the two Notices of Decision.

Mrs. Cassorla stated she wanted to thank Ms. Magnuson for all of her service. She leaves awful big boots to fill.

Mr. DeCola seconded it and Chairman Saccento concurred with a third.

Chairman Saccento stated it will be a great loss to the Town; our services will change. It is what the Selectmen decided to do. Addressing Ms. Magnuson, she stated they wished her the best of luck in her future endeavors. She thanked Ms. Magnuson very much. The other Board members concurred.

Ms. Magnuson thanked them all and stated she has loved her time in Newport.

Chairman Saccento then signed the two Notices of Decision for Case #1065.

There being no further business, on a motion by Mrs. Cassorla, seconded by Mr. Lain; *the Board voted to adjourn at 9:23 p.m. The motion passed 5-0-0.*

Respectfully submitted,

Maura Stetson, Scribe

Approved: May XX, 2018