

Zoning Board of Adjustment
Minutes of April 23, 2015
6:30 PM
Board of Selectmen's Room/Municipal Building
15 Sunapee Street/Newport, NH

MEMBERS PRESENT: Bennie Nelson, Chairman; Jeffrey Kessler, David Lain, Elizabeth Cassorla, Scott McCoy, Alternate sitting for Melissa Saccento. Alternate Donald Boutin was also present, sitting in the audience.

STAFF PRESENT: Julie Magnuson, Planning & Zoning Administrator.

VIDEOGRAPHER: Louis Cassorla.

CALL TO ORDER: Chairman Nelson called the meeting to order at 6:31 p.m., and introduced himself and the Board Members.

ADMINISTRATION: Ms. Magnuson asked the Board if they would be willing and available to move the May Zoning Board of Adjustment meeting to Thursday, June 4, 2015. The Board agreed to change the May 2015 meeting to June 4, 2015, with application materials due on/before May 14, 2015.

Mr. Kessler announced that, with the DRED support for the Mount Sunapee expansion, there would now be a Public Hearing held on May 5, 2015 at 6:00 p.m. at the Ski Lodge.

MINUTES: On a motion by Mrs. Cassorla, seconded by Mr. McCoy, *the Board voted to approve the minutes of February 26, 2015 with the following changes: on page 4; first paragraph "He explained deliveries to the store..." should be changed to read "Mr. Simpson explained deliveries to the store..." and page 4; first paragraph "Mr. McCoy stated peak would be..." should be changed to read "Mr. Simpson stated peak would be..." Mr. Lain abstained. The motion passed 4-0-1.*

Ms. Magnuson informed the Board that she spoke to Bernie Waugh, our municipal attorney, regarding meeting procedure for a variance. Attorney Waugh also is a member of the ZBA in Hanover, NH. Ms. Magnuson said that this Board can change the order of the Finding of Facts to their preference, as long as they hear all five facts. They may also have a motion for each fact, but would still need one overall motion for the case. Attorney Waugh also told Ms. Magnuson that the Hardship was the most difficult of the facts and recommended the Board start with that one. The Board decided to discuss this at the end of the meeting.

NEW BUSINESS:

Case #1026: Bonnie Gervais (Owner) requests a Variance to the terms of Article II, Section 207.1 of the Zoning Ordinance to permit a Family Daycare Home (permitted in the General Residential (R-2) Zoning District) at her residence identified as Map 111 Lot 236 and located at 43 Pinnacle Road in the Single Family (R-1) Zoning District.

Chairman Nelson opened Case #1026 at 6:40 p.m. and explained the procedure for a Public Hearing.

Ms. Magnuson read her review which highlighted the difference in definitions of “Family Daycare Home” and “Family Group Daycare Home”. Ms. Magnuson pointed out that a “Family Daycare Home”, which Ms. Gervais was applying for, is completely absent in the Single Family (R-1) Zoning District, which is why this case is a Variance and not a Special Exception.

Ms. Bonnie Gervais was present to discuss Case #1026. She read through her application and stated that granting the Variance would not be contrary to the public interest because there will be no change to the exterior of the home and it will remain residential. She said there is currently only one family child care facility in Newport. She stated that there would not be an increase in commercial traffic on Pinnacle Road and parents would be using their personal vehicles to drop off and pick up their child, taking only five to ten minutes. Ms. Gervais added that there would not be any busses or vans coming to or leaving her residence. Ms. Gervais said the family child care would enhance the community by offering child care services to other families that reside in the community at much more affordable rates than a corporate child care center.

Ms. Gervais stated that the spirit of the ordinance is observed because there would not be any commercial disruptions, because she is not running a commercial business, but a private family child care service in a private home. She said that only personal vehicles would be coming and going to drop off or pick up a child. Ms. Gervais said that caring for children would not interfere with other residents in the area and the public’s safety is not at risk.

Ms. Gervais stated that granting the Variance would do substantial justice because families in the community can benefit from a family home environment, where quality care would be offered in a safe, clean, and state inspected family home. She said that she is not going to run a babysitting service, but a privately owned business operated by a professional and abiding by the state regulations. Ms. Gervais said that this family child care would be close and convenient for families and since turnover rates are smaller in this type of facility, children would be able to build a lasting bond with their caregivers. She stated that parents have much more flexibility such as helping with snacks or bringing in diapers. Ms. Gervais stated that her fees would be much more affordable compared to corporate centers. She added that she holds an Associate’s Degree in Early Childhood Education and has four classes remaining to earn her Bachelor’s Degree in Human Services with Early Childhood Concentration.

Ms. Gervais continued by stating that the values of the surrounding properties would not be diminished because her home would remain single family and continue to be used as single family.

Ms. Gervais stated the not granting the variance would cause unnecessary hardship because the purpose of the zoning restriction is to maintain residential areas and to prevent the development of commercial establishments in these areas, thus adversely affecting the essential character of the neighborhood. She said the restriction applied to her property does not serve a purpose because the characteristic of the neighborhood will not change. She said there would be no alteration of the property and traffic would be no more than that found in other residential areas. She continued by stating that the proposed use of the property is reasonable and will not alter the essential character of the neighborhood. She said her home is ready to comply with the state licensing requirements for a family child care business and is equipped with hardwired smoke alarms and fire extinguisher. She said her home as the proper egresses with two exits leading to the outside of the home. Ms. Gervais said the zoning restriction applied to her property interferes with her reasonable use of the property.

Chairman Nelson opened the discussion to the Board to ask questions of the applicant.

When asked by Mr. Kessler what the planned hours of operation would be, Ms. Gervais stated from 6:00 a.m. to 6:00 p.m. He asked about the number of children and Ms. Gervais said up to six, but that it was up to the state inspectors to determine how many she could have. Ms. Magnuson pointed out that the maximum was six, but there could also be three part-time school children as well. Mr. Kessler asked Ms. Gervais the type of facilities she would have for the children in her yard. Ms. Gervais answered by

saying that she would have outdoor equipment and a fence, but has not invested in these items until she knows if this application would be approved.

Mr. McCoy asked Ms. Gervais if she had her state license. Ms. Gervais said she needed to get approval on the variance before she could get her state license. Mr. McCoy asked the applicant if she felt she had adequate parking. Ms. Gervais said she has a small driveway and parents would only be parking for a few minutes to drop their child off or pick their child up. Mr. McCoy asked for clarification on her response to question #3 of her application where she stated "Parents have much more flexibility such as with helping with snacks or bringing in diapers." He asked if parents are helping with snacks, does that mean they would be staying for more than five minutes. Ms. Gervais stated that no one would be coming in to help, and that was not her intention in her response to question #3.

Ms. Magnuson said she talked to the Upper Valley Lake Sunapee Regional Planning Commission (UVLSRPC) to gather data about trips per day for this type of business. She said that for this business type, used by the state, they use a multiplier of 4.52 trips per day per child. Ms. Magnuson stated that if Ms. Gervais were approved for nine children, that would be an additional 40.68 trips per day on that road. Ms. Magnuson added that she also spoke to Police Chief Burroughs to get his thoughts on this case, and he said that road is challenging now and he would be very concerned about traffic. Chief Burroughs told Ms. Magnuson he was concerned about access and egress since cars would not be able to turn around in the driveway. Chief Burroughs told Ms. Magnuson that he felt this would have a negative impact on the neighborhood as far as the impact of the character and the amount of traffic.

Mr. Lain asked Ms. Gervais if she had any plans on widening her driveway. Ms. Gervais said that she hadn't thought about that, but agreed with Mr. Lain that if more than one parent comes at one time, they would probably have to park on the street. Mr. Lain said he would have a problem with loading and unloading on the street.

Mr. McCoy asked if this case would go to the Planning Board so they could handle the traffic issue. Ms. Magnuson said that if this was in a commercial district than it would. Ms. Magnuson said that this Board could request a traffic study or any other type of study, with any expense the responsibility of the applicant. Chairman Nelson said that the Zoning Board's concern for traffic is related to how it impacts the character of the neighborhood.

Ms. Magnuson pointed out that the Town of Newport has more than one daycare; Cinnamon Street and the Depot are approved for child care.

Chairman Nelson opened the discussion for abutters who had question, asking them to direct the questions to the Board and not the applicant.

Mr. Boutin asked what ages would attend this daycare. Ms. Gervais stated that ages could be from 6 weeks to 12 years.

Ms. Amy Zullo identified herself as an abutter who lived directly behind the applicant. Ms. Zullo said there currently was no fence around the applicant's property and she was worried about children falling over her retaining wall. Ms. Gervais said that the state would require a fence, but she was waiting for the Variance approval before she invested in a fence.

Mr. Christopher Kane, abutter, asked if there would be a plan for the flow of traffic on the road. Ms. Magnuson said that it would be more up to the highway department to do that, although the ZBA could request written comments from highway and police, prior to approval or denial.

When Mr. Lain asked the applicant if she would be willing to widen her driveway to accommodate at least two cars, Ms. Gervais stated that she would be willing.

Ms. Corrie Dickman, an abutter, stated that this road is down to one lane in the winter time, so she would be curious to see how the road would be maintained for people to go through. Mr. Kessler pointed out that the nature of this area is that most roads have that issue in the winter time, but people just pull over for each other.

Ms. Maureen Marcotte, abutter, said that her concern is for where the cars would turn around. She said she moved there because it was a quiet area.

Chairman Nelson said that on his way into the meeting tonight, he received a phone call from Audrey and Alex Zullo from Columbus Circle expressing their opposition to this application. They told Chairman Nelson that they were not in favor of additional traffic and that they had moved to that area because it is quiet.

Mr. Kane said that the traffic is a big issue and he and his wife both agree they would not prefer this in their neighborhood.

Ms. Dickman said she wouldn't be opposed to a very small (2-3 kids) daycare but she felt more than that would be a burden on the neighborhood. Ms. A. Zullo agreed.

Ms. Marcotte asked, if approved, would this Variance remain if the property should change ownership. Ms. Magnuson said that this Variance would stay with the land and remain in effect only to expire should the use cease for more than a 12-month period. Mr. Kessler pointed out that any new property owner would have to get state approval for a daycare.

Ms. Gervais said she did not think it through that well, because she did not realize that six children would make an impact on the traffic. Mr. Kessler pointed out that children typically do not come and go throughout the day. Chairman Nelson said that dropping off a child may be counted as two trips; going in and then going out, according to the state multiplier.

Mrs. Jannine Kane, abutter, said she was concerned about the extra noise because she is home with her small daughter during the day.

There was general discussion on fencing around the applicant's property and the state requirement. Ms. Gervais said it is most likely a requirement of the state but she didn't know the details at this time.

Mrs. Marcotte said it is now a quiet neighborhood and if this were to be approved, it would be a definite change in the area.

There being no further public comments, Chairman Nelson closed the public hearing at 7:15 p.m.

There was general discussion amongst the Board about having insufficient information to make a fair decision. The consensus of the Board was to make a site visit, with abutters invited to attend, on May 7, 2015 at 5:30 p.m. Ms. Magnuson said that no testimony would be allowed, however, the Board would be able to ask questions of the applicant.

Ms. Gervais stated that she did not realize this would be such a difficult process, and she would like to withdraw her application. She thanked the Board for her time.

Case #1027: Deniz Fonseca (Owner) requests a Variance to the terms of Article II, Section 206.1 of the Zoning Ordinance (that requires a minimum dwelling size of 600 sq. ft.) to permit the erection of a 384 sq. ft. seasonal cabin on property identified as Map 221 Lot 007 and located at 66 Gove Road in the Rural (R) Zoning District.

Chairman Nelson opened the public hearing for Case #1027 at 7:24 p.m.

Ms. Magnuson read her comments on this case. She pointed out that if this were approved, the applicant would be required to go to the Planning Board and also the Board of Selectmen for permission to apply for a building permit to build on a Class VI road, and required to sign a waiver of liability with the Town. Ms. Magnuson told the Board that there was a similar case in 2009 that was approved for a 16 x 20 “seasonal cabin” on Langley Road.

Mr. Deniz Fonseca was present to discuss his application. He stated that this cabin would be a pre-cut kit, purchased from Jamaica Cottage Shop. He said it is essentially a one room cottage which would replace the camp that was there and collapsed a few years ago. Mr. Fonseca stated that the cabin that collapsed was on the property when he purchased it in 1973, and they had used it to spend weekends camping. Mr. Fonseca said he lives in Connecticut. He added that this site was the only level site on the property and he was trying to keep the size of a new cabin small enough so he could manage putting it on that site. He said if the cabin was larger, the steepness of the property would be an issue, and getting materials to site would also be an issue. Mr. Fonseca said he would prefer to put up a bigger structure, but the property would not allow it.

Mr. Fonseca said the property is remote, down a dirt road, with hundreds of acres of forest surrounding it. He felt that his proposed cabin, which would replace the collapsed one, would make the area immensely better.

There was discussion about the type of foundation Mr. Fonseca planned on putting in. Mr. Fonseca said he has a builder who is going to assess the project and let him know what he needed to use. Ms. Magnuson pointed out that those types of issues would be addressed at the building permit level, by the building inspector, who will be sure it meets state code. Mr. Fonseca said he would eventually run electricity to the camp, which would be fairly easy since power runs down that road.

There was general discussion about the definition of a dwelling and how “tiny houses” are now becoming more popular. Mr. Kessler said as long as the dwelling meets the needs of the owners and the building code and doesn’t negatively impact the character of the neighborhood, than it should not be a problem. Mr. Lain said he thought it was great to have a weekend getaway, no matter what size it was. Ms. Magnuson said she would bring this discussion back to the Planning Board for review of minimum size dwellings because they are the ones who could recommend changes to the Zoning Ordinance to present at Town Meeting.

Mr. James McMahon, abutter and only resident on that road, was present to show his support for this application. He said he maintains this Class VI road entirely. He said he thought this cabin would be a big plus. Mr. McMahon said the applicant loves coming to Newport with his family. Mr. McMahon said he was 100% in favor of this application and asked the Board to approve it.

Mr. Kessler pointed out to the applicant that one concern of the Board of Selectmen regarding the waiver of liability would be when they had guests, who might require emergency services.

Chairman Nelson closed the public hearing at 7:44 p.m.

On a motion by Mr. Kessler, seconded by Mrs. Cassorla, ***the Board voted unanimously that an unnecessary hardship would exist if the application was denied because there was no rationale to insist on a 600 square foot minimum dwelling on that site, due to the steep slope and accessibility of the site.***

On a motion by Mr. Kessler, seconded by Mrs. Cassorla, ***the Board voted unanimously that the values of the surrounding properties would not be diminished because the new structure would meet building codes and will not be an eyesore.***

On a motion by Mrs. Cassorla, seconded by Mr. Kessler, *the Board voted unanimously that granting the Variance would do substantial justice because the owner has owned the property since 1973 and this would allow him to enjoy his property; and the general public would not know it exists.*

On a motion by Mr. Kessler, seconded by Mrs. Cassorla, *the Board voted unanimously that the spirit of the ordinance would be observed because the size of the structure would not be detrimental to other structures in the neighborhood.*

On a motion by Mrs. Cassorla, seconded by Mr. Kessler, *the Board voted unanimously that granting the Variance would not be contrary to the public interest because the proposed structure is located off of a Class VI road and the public would not even know it was there.*

On a motion by Mr. Kessler, seconded by Mrs. Cassorla, *the Board voted unanimously to grant the Variance for Case #1027 for a dwelling under 600 square feet, located on Map 221 Lot 007 at 66 Gove Road as presented.*

OTHER: There was discussion about changing the order of the questions on the application so that the hardship would be heard first. The Board decided that question #5 should be moved to the first item and then continue with #1, 2, 3, and 4. Ms. Magnuson said she would double check that they could be rearranged and then change the forms.

Ms. Magnuson updated the Board on letters she has recently sent out to owners regarding the condition of their property, and regarding a human septic business on Unity Road.

ADJOURNMENT: On a motion by Mrs. Cassorla, seconded by Mr. Kessler, *the Board voted unanimously to adjourn at 8:05 p.m.*

Application materials must be received on/before **May 14, 2015** for the next regular meeting of the Zoning Board of Adjustment scheduled on **June 4, 2015 at 6:30 p.m.**

Respectfully submitted,

Joanne Dufour Rowe
Recording Secretary