

**Zoning Board of Adjustment
October 17, 2019 6:30 PM
Board of Selectmen's Room/Municipal Building
15 Sunapee Street/Newport, NH**

PRESENT: Melissa Saccento Chairman; Jeffrey Kessler, BOS Representative; Ben Nelson

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

VIDEOGRAPHER: NCTV

STAFF PRESENT: Liz Emerson, Zoning Administrator

COMMUNITY MEMBERS PRESENT: Holly White, abutter; Michael and Cheryl Gonyea, abutters; Travis DeCamp, Kacey Gardner, Arnold Greenleaf, Melinda Newcomb, Malory Tetreault

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: September 19, 2019

September 19, 2019

On a motion by Mr. Kessler, seconded by Mr. Nelson; *the Board voted to approve the minutes of the September 19, 2019 meeting as presented. The motion passed 3-0-0.*

Chairman Saccento addressed the public in attendance and told them the ZBA format, explaining when they would have a chance to speak about Case #1081 through the Chair.

Case #1081: Melinda Newcomb (Owner): requests a Variance from the terms of Article 2 Section 206.3 of the Zoning Ordinance to permit building a dwelling unit on a lot smaller than the required 40,000 square feet. The property is identified as Map 239 Lot 021 and is located between 134 and 152 Cutts Road in the Rural (R) Zoning District.

Chairman Saccento opened Case #1081.

Chairman Saccento acknowledged Mrs. Melinda Newcomb and asked her to present her case to the Board.

Mrs. Newcomb began by telling the Board her proposed general plans for the property at 140 Cutts Road. She was considering building a dwelling 800 sq. ft. to 1100 sq. ft. Chairman Saccento stated that she was not considering a "tiny home". Mrs. Newcomb agreed with Chairman Saccento and said she was not.

Chairman Saccento asked the Board if they had questions. They did not at this time.

Chairman Saccento asked if the land on the lot in question was steep. Mrs. Newcomb said yes.

Mr. Kessler addressed Ms. Emerson and asked for the history of the lot. He asked if it had just been created. Ms. Emerson told Mr. Kessler that from her research it has been there for a while. The latest sale date the Town had was in the 1990s. The lot is approximately 4200 square feet, too small to meet the

40,000 square foot requirement. There are other houses in Newport that are on smaller lots than the Cutts Road lot in question.

Mr. Kessler said that the other requirement the lot did not meet was road frontage. Ms. Emerson had 100 feet required; Mr. Kessler had 200 feet required. The ZBA Ordinance 206.3 stated 200 feet. Ms. Emerson agreed.

Board members and Ms. Emerson discussed that the frontage predated the current ZBA requirement, the existing requirement for a lot size was for adequate space for a well and septic system with the advancements in septic and well construction the land required was less.

Ms. Emerson stated the property did not appear to have wetlands; she explained the surrounding land's topography.

Mr. Nelson stated they would need State approval for a septic system and well. Ms. Emerson agreed.

Mr. Kessler asked Ms. Emerson if the ZBA should also be looking at a variance for Section 206.4. He explained why. Mr. Kessler read Section 206.4 into the record.

In discussion Mr. Kessler stated:

- 1 It was a preexisting lot
- 2 There should be 40,000 sq. ft. to accommodate water and sewer
- 3 Both water and sewer needed to be approved by the State (size, placement, etc.)

Mr. Kessler addressed Ms. Emerson and asked if the lot size requirement still applied. Ms. Emerson told him that the Planning Commission was looking over requirements and redrafting them to bring many things up to date.

To sum up, Chairman Saccento stated the applicant was looking for permission to build on the lot. Would there be a problem in getting a permit to build.

Mr. Nelson stated he believed the ZBA would have to do two variances.

Mrs. Newcomb stated she was told the road frontage was okay. Ms. Emerson said the lot had adequate frontage when the lot was created in the 1990s. That was predating the newest ZBA ordinance.

Mr. Kessler stated the ZBA was dealing with a preexisting lot under 206.3. He asked Ms. Emerson if the ZBA could also deal with the case under 206.4.

There was a general discussion among Board members about the case and variance request. Ms. Emerson said that Section 206.3 stated exactly what the applicant wanted to do. Mr. Kessler stated that if the Board got to the point of granting the variance the Board should mention 206.3 and 206.4. Everyone agreed.

Chairman Saccento asked if the Board had further questions of the applicant. There were none.

Chairman Saccento asked if there were questions or comments from the abutters present.

Ms. Holly White addressed the Chair and stated that one of her big issues is that there were two culverts. One was on her lot and one was on the Newcomb's lot. She asked how the water would be diverted when they put in their driveway. The road already got terribly bad during mud season.

Mrs. Newcomb stated they would not be able to go in on the lot very far.

Ms. White asked the Newcombs if they were going to fill in next to their other abutters in order to build.

Chairman Saccento addressed the applicants and abutter and asked that discussion be directed to the Chair.

Chairman Saccento asked Ms. White to go up to the ZBA members and show where the culverts were on the property. Ms. White complied with her request, indicated on a map where they were located and where the water flowed onto the Newcomb property to the brook in the back. The Board discussed the water, its location, and the Town owned culverts.

Mr. Kessler stated that he would think the builder and owner would take into account the water running down the property and take appropriate measures.

Ms. White stated her second question was what was the ordinance on how far away from the property line(s) did the owner have to build. Ms. Emerson stated that the:

- 1) Side setbacks were 25 feet (no less than ten). They can't build within ten feet of the property line shared by White/Newcomb.
- 2) Front setback is 50 feet.
- 3) Rear setback is 25 feet.

Additional variances can be requested to reduce the setbacks; that would be at another meeting.

Ms. Emerson told Ms. White that when the Building Application came to the Planning & Zoning Office it would be looked at to ensure they met the setbacks.

Ms. White asked if the applicants would have to come before the ZBA before they built on the property. She was told only if the Newcombs wanted to change the required setbacks (then they would need an additional variance).

Ms. Emerson addressed Ms. White and explained the buildable area shown on the map.

Chairman Saccento addressed Ms. Emerson and asked if the building inspector addressed (property) drainage. Ms. Emerson stated that would be addressed with the driveway permit. She explained the process.

There was a short discussion among the Board members about drainage and water diversion onto neighboring properties.

Mrs. Newcomb addressed the Chair and stated what she has observed when she has been at the property: looking at the property, to the right is a brook. To the left is a big culvert under the road and a big gully along the property line. She had not observed water. She did not know where the water went.

Ms. White stated that everyone on Cutts Road had water behind their house. She explained the flow of water to Mrs. Newcomb.

Mrs. Newcomb stated that her intent was to stay away from the culverts because the gully was very deep.

Chairman Saccento acknowledged the other abutters in the room, Mr. Michael and Cheryl Gonyea. Mr. Gonyea stated their lot abutted the Newcomb lot on two sides. The Board invited him up to the table to look at the map of the properties. Mr. Gonyea pointed out an error on the map dimensions. Ms. Emerson agreed with the error, stating the Town was working with the mapping company to correct several errors.

He also pointed out a culvert placement to the Board and where it drained. He stated that he did not want additional overrun from her property. He wanted them to be good neighbors. Mr. Gonyea explained a few more items on the map to the Board.

Chairman Saccento addressed Mr. Gonyea and asked him to list his concerns.

Mr. Gonyea stated:

1. The slope of the land
2. The filling of the land for building
3. Drainage
4. Being good neighbors and watching property lines

Chairman Saccento addressed Mrs. Newcomb and asked if they had plans or were they waiting for the ZBA decision to see if it was possible.

Mrs. Newcomb stated she had some ideas on what she would like to do with the property. She stated she completely understood the concerns of her neighbors. She explained the culvert drop-offs to the Board.

Mr. Nelson asked, for clarification, if they could build close to the property lines. Mrs. Newcomb said no; adding she needed to find all the pins. Mr. Nelson posed the question to the abutters. They agreed with Mr. Nelson and Mrs. Newcomb (there couldn't be any building close to the property lines).

Chairman Saccento asked the applicants about the fill they were planning to use. They had not talked to a contractor. Mrs. Newcomb explained to the ZBA members the next steps she proposed to take: she would want to do some site testing, find where the septic and well could be placed; etc.

Chairman Saccento again asked if they would need to use fill in order to build on the property. Mrs. Newcomb said yes.

When Mrs. Newcomb got her building plans, she would go to the Planning Board.

Mr. Nelson stated that in listening, the water ran to the gullies; in adding fill the water would still run into the gullies.

Mrs. Newcomb stated they were planning on keeping the lot wooded; they would cut only enough trees to build a house.

Chairman Saccento asked if there were any other abutters. There were none.

Chairman Saccento asked if the Board had any further questions. There were none.

Chairman Saccento addressed the applicants and explained the procedure of the Board going into Deliberations.

Chairman Saccento closed the meeting to the public. On a motion by Mr. Nelson, seconded by Mr. Kessler; ***the Board voted to go into Deliberations for Case #1081. The motion passed 3-0-0.***

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 Mr. Nelson; that:

Granting the variance would not be contrary to the public interest because it is in a residential area and it is an existing lot. Septic and water will need to meet State approval. In discussion, Mr. Nelson

stated it was 10% smaller than it should be and the lot frontage is what it is. Chairman Saccento said it was a preexisting lot. Chairman Saccento called for a vote. ***The motion passed 3-0-0.***

On a motion by Mr. Nelson, seconded by Mr. Kessler; that:
The spirit of the ordinance would be observed because the way the lot is made up it will not put houses on top of each other, which is what the variance prevents. In discussion, Mr. Nelson stated the frontage is there, the lot was made with that frontage. Chairman Saccento called for a vote. ***The motion passed 3-0-0.***

On a motion by Mr. Kessler, seconded by Mr. Nelson; that:
Granting the variance would do substantial justice because it would allow the property owner to utilize their lot of an existing size. There was no discussion. Chairman Saccento called for a vote. ***The motion passed 3-0-0.***

On a motion by Mr. Nelson, seconded by Chairman Saccento; that:
For the following reasons, the values of the surrounding properties would not be diminished: It would fit in with the character of the neighborhood and another house on the road might aid in getting the road fixed. In discussion, Mr. Nelson stated it was a long mud season up there. Chairman Saccento called for a vote. ***The motion passed 3-0-0.***

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:

- A. On a motion by Mr. Kessler, seconded by Chairman Saccento that: ***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 it is an existing size lot and the State will determine if its size is adequate for sewer and water.*** There was no discussion.

AND:

- B. On a motion by Mr. Kessler, seconded by Chairman Saccento that: ***The proposed use is a reasonable one because: it will be keeping in the character of the neighborhood.***

Chairman Saccento called for a vote on A and B. ***The motion passed 3-0-0.***

The Board voted to memorialize the decision of the ZBA to grant the Variance.

On a motion by Mr. Kessler, seconded by Mr. Nelson; ***the Board voted to grant the Variance for Case #1081 Melinda Newcomb (Owner) from the terms of Article 2 Sections 206.3 and 206.4 of the Zoning Ordinance.*** Chairman Saccento called for a vote. ***The motion passed 3-0-0.***

Case #1082: Arnold L. Greenleaf (Owner) and Kacey Gardner (Agent) request a Special Exception for Mixed Use as provided for in Article IV, Section 402 of the Zoning Ordinance to permit a truck accessory business and a residence. The property is identified as Map 235 Lot 019 and located at 868 John Stark Highway in the Rural Commercial (RC) Zoning District.

Chairman Saccento opened Case #1082.

Chairman Saccento acknowledged Ms. Emerson. Ms. Emerson read her Administrative Review into the record. She stated the Zoning Office has no issues with the application.

Chairman Saccento acknowledged applicant Ms. Kacey Gardner and asked her to present her case.

Ms. Gardner addressed the Board and stated that the land, if purchased from Mr. Greenleaf, would be used for personal and business use. She explained to the Board her plans of using it as a residence and also in the future parking personal business trucks at night and storing empty 'roll off' dumpsters (in winter) on the lot.

She stated things would be clean, orderly and no trash would be onsite. Her question to the ZBA was if she bought the property would she be able to do these things at this location.

Chairman Saccento addressed the Board members and asked if they had questions.

They had none. Mr. Nelson stated his only question had been driveways, parking and backing into the property. His questions had been answered.

There were no abutters present.

On a motion by Mr. Kessler, seconded by Chairman Saccento; ***the Board voted to go into Deliberations. The motion passed 3-0-0.***

Zoning Board of Adjustment Special Exceptions-Mixed Use

Standard A.

A motion was made by Mr. Kessler, seconded by Chairman Saccento; ***that the selected site is an appropriate location for the proposed use because it is in keeping with other businesses in the neighborhood.*** Standard A has been met. ***The motion passed 3-0-0.***

Standard B.

A motion was made by Mr. Kessler, seconded by Mr. Nelson; ***that adequate and safe highway access is provided to the proposed site and that there is adequate off-street parking provided for the proposed use because there was adequate and safe highway access provided and there is adequate off street parking because there is.*** In discussion, Mr. Nelson explained the areas of off street parking. Standard B has been met. ***The motion passed 3-0-0.***

Standard C.

A motion was made by Mr. Kessler, seconded by Mr. Nelson; ***that adequate method of sewage disposal is available at the proposed site because it is storing material objects.*** Standard C has been met. ***The motion passed 3-0-0.***

Standard D.

On a motion by Mr. Kessler, seconded by Mr. Nelson; ***the proposal will not be detrimental, hazardous or injurious to the neighborhood because it is similar to other businesses in the area.*** Standard D has been met. ***The motion passed 3-0-0.***

Standard E.

Mr. Nelson made a motion ***that the proposed use is consistent with the spirit of the Ordinance and the intent of the Master Plan because it is in a Rural Commercial Zone and intended to be both and the properties on either side are residential with some commercial uses.***

Mr. Kessler seconded the motion. Standard E has been met. ***The motion passed 3-0-0.***

After voting on Standard A, B, C, D and E for Case #1082; the decision of the Board was memorialized. In discussion, a condition such as keeping the tree line was brought up. It was decided there would be no condition to the Special Exception.

On a motion by Mr. Kessler, seconded by Mr. Nelson; ***the Board approved Case #1082: Arnold L. Greenleaf (Owner) and Kacey Gardner (Agent) request a Special Exception for Mixed Use as provided for in Article IV, Section 402 of the Zoning Ordinance as presented. The motion passed 3-0-0.*** Chairman Saccento congratulated the applicant. She stated she would sign the Notices of Decision after the last case.

Case #1083: Arnold L. Greenleaf (Owner) and Kacey Gardner (Agent) request a Variance from the terms of Article II, Section 206A.1 of the Zoning Ordinance to permit outdoor storage. The property is identified as Map 235 Lot 019 and located at 868 John Stark Highway in the Rural Commercial (RC) Zoning District.

Chairman Saccento opened Case #1083.

Chairman Saccento acknowledged Ms. Emerson. Ms. Emerson read her Administrative Review into the record. She stated the Zoning Office had no issues with the application.

It was noted by Mr. Kessler that there was a typographical error on the application. Section 206.1 should read 206A.1. It was correct in the Administrative Review, agenda and posting.

Mr. Nelson addressed the ZBA members present and stated that as long as the storage was behind the house (out of view of passing traffic) it would be okay with him.

Ms. Gardner addressed the ZBA and stated they (ZBA) had mentioned trees (in the Special Exception case); they wanted to keep as many trees on the property as well.

There was a discussion between the ZBA and Ms. Emerson concerning surrounding properties and permitted uses.

Chairman Saccento 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 #1083. The motion passed 3-0-0.***

Variance Statement of Reasons and Discussion

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

On a motion by Mr. Nelson, seconded by Mr. Kessler; that: ***Granting the variance would not be contrary to the public interest because it fits in to the character of the neighborhood and is what Rural Commercial was designed for.*** There was no discussion. ***The motion passed 3-0-0.***

On a motion by Mr. Kessler, seconded by Chairman Saccento; that: ***The spirit of the ordinance would be observed because there are other businesses in the area with outside storage.*** There was no discussion. ***The motion passed 3-0-0.***

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

Granting the variance would do substantial justice because it allows the owners to utilize their property and is consistent with the character of the neighborhood. There was no discussion. **The motion passed 3-0-0.**

On a motion by Mr. Nelson, seconded by Mr. Kessler; that:
For the following reasons, the values of the surrounding properties would not be diminished because it is in character of the surrounding properties. There was no discussion. Chairman Saccento called for a vote. **The motion passed 3-0-0.**

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:

- A. On a motion by Chairman Saccento, seconded by Mr. Kessler; that: **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 it is in the Rural Commercial Zoning District and this will be a commercial use and it is meant to be mixed use in this area.**

AND:

- B. On a motion by Chairman Saccento, seconded by Mr. Kessler that: **The proposed use is a reasonable one because: this property is located in the Rural Commercial Zoning District and is surrounded by commercial properties.**

Chairman Saccento called for a vote on parts A and B. **The motion passed 3-0-0.**

The Board voted to memorialize the decision of the ZBA to grant the Variance. On a motion by Mr. Kessler, seconded by Mr. Nelson; **the Board voted to grant the Variance for Case #1083: Arnold L. Greenleaf (Owner) and Kacey Gardner (Agent) from the terms of Article II, Section 206A.1 of the Zoning Ordinance as presented.**

Chairman Saccento called for a vote. **The motion passed 3-0-0.**

Chairman Saccento congratulated the applicant and signed the Notices of Decision.

Ms. Gardner thanked the Zoning Board members for granting the variance and approving the special exception.

On a motion by Mr. Nelson, seconded by Mr. Kessler; **the Board voted to adjourn at 7:43 pm. The motion passed 3-0-0.**

Respectfully submitted,

Maura Stetson
Scribe

Approved on: November XX, 2019