

Newfields Zoning Board of Adjustment
March 27, 2024

Attendance: Chairman Kent Lawrence, Betsy Coes, Steve Yevich, and Bob Elliott. Jack Steiner and alternates Catherine Tarnowski and Scott Sakowski were absent from the meeting.

Guests: n/a

Chairman Lawrence called the meeting to order at 7pm and introduced the Board Members above. Chairman Lawrence introduced tonight's case and explained that the lawyer requested a continuance because Mr. Ward was called away for work. The ZBA still convened to decide whether to grant the continuance.

1. Case #23-08-30-01 Jason Ward Rehearing—Variance Request for relief from Article 3, Schedule II, Section 3.4.2 and Article IV, Section 4.9 of the Newfields Zoning Ordinance. The property is located at 11 Swamscott St. in the Residential Village District, Map 102, Lot 26.

VARIANCE REQUIREMENTS NARRATIVE

n/a

PUBLIC COMMENT

See below for Nancy Taylor's input.

ZBA DISCUSSION

Bob asked what grounds for not granting a continuance would be. Betsy wanted to speak to the lawyer tonight to support him in filling out the application, and to inform him that you can't fill out one application for four different variances, especially those that are new to the Board. Chairman Lawrence said he put this in front of the Town Planner, and he said it was complete. It's difficult because case law cited in the application could be baloney and the Board wouldn't necessarily know. Betsy said that he's asking for four variances: 1 and 2 are combined, but those are answers that cite and regurgitate our zoning laws. All four variances cited one criterion. One of the attorneys Chairman Lawrence spoke with said that it was the nature of the law office that they present that way, and typically put it all out there on an application like this.

Chairman Lawrence said it seems all he's able to do is have the Town Council look at the application and say it's complete or not complete. It's up to the ZBA to say that the answers are not up to snuff, but the Board can't fill out the application for the applicants. There was a vote on changes to the zoning ordinances that are now in the updates, and they were all part of the things that were brought up to the Planning Board after the ZBA was tripped up with some of the language in the ordinances. Chairman Lawrence doesn't want to give up on how the Board can have a better review of cases coming in, but acknowledged that right now, this what the process is. Betsy said she doesn't think it's fair to ask the Town Council or the planners to do the review. Chairman Lawrence said we're just getting in the world where the legalese is spinning around us. Betsy said she wants to see four applications, even if they are the same for all four. Bob clarified that she meant technically the same.

Bob said that's a technicality that Glenn Greenwood should be able to note. Betsy asked if we should insist on it being correct. Chairman Lawrence said he doesn't want to feel like he must review an incoming case and check everything that needs to be there.

Betsy said the applicant didn't even try, and she realized that he didn't figure out the square footage of the sugar shack correctly. She added there are lines on the drawing that have no measurements that are critical to the decision. Bob said he didn't remember the sugar shack in the first one, and it was determined it wasn't included in the initial application. Steve said he thinks the lawyer probably alerted the applicant to that. Chairman Lawrence added that the applicant even mentioned that he would remove the sugar shack if necessary to get the square footage needed. He said he thought the application was asking for approval for the sugar shack, and Bob said that we don't legalize it there. Chairman Lawrence said the applicant has to admit that it's there and account for ground coverage, and Betsy said he doesn't even consider the overhang part of coverage as it's not included in the drawing.

Bob said we can only address the evidence in the hearing that night, so if information is missing that night, we can only act on that. He said that's the whole judiciary process is that we can look at it that night. Chairman Lawrence said there's space for a rehearing. Betsy asked how we tease out these four issues from this application. Bob said we must deal with this case based on what is presented in the application. Betsy said she was trying to be a good board member to help them with the application, and asked why can't we call it invalid? Steve said we can, but we must wait four weeks until the applicant is in front of us.

Nancy Taylor asked if we could plan to tell the applicant exactly how to fill it out, and Betsy said that's what she wanted to do instead of creating ill-will by waiting until he shows up for the meeting. Chairman Lawrence and Betsy outlined the things that were missing: the driveway and site distance, which is determined by the Department of Transportation. Bob asked if any of his references had changed due to the new regulations. Steve said we could alert the applicant to the fact that the ordinances were just amended. Chairman Lawrence said there were changes with the verbs and setbacks for the ADUs. Bob said he thought we clarified the description of the setback. Nancy said that in her letter to the Board she wanted to be positive, but she felt like she was rambling on. She clarified that she's not against granting the variance and was shocked that the letter read that way. Chairman Lawrence said he understood it to mean that she might want a different plan. Nancy apologized, and Chairman Lawrence said that she could share her opinion in a month's time at the next hearing.

VOTE

Chairman Lawrence made a motion to accept the request to continue the case to the next regularly scheduled meeting in April, and Betsy seconded. VOTE Yes-4, No-0

Bob said zoning is messy and it's a lot about interpretation, and Betsy said that she can't be bamboozled by the case law. Chairman Lawrence said any one of us can ask the lawyer to elaborate or ask for clarification about case law, and Steve said he expects some of us will. Nancy Taylor said again that she thinks it would be helpful for the lawyer to know that there needs to be additional applications filled out. Bob said he thinks it's different when a lawyer comes in; it should be done properly. Chairman Lawrence said they benefit by our inexperience in law. Betsy said this was presented to the Portsmouth Zoning Board, and Steve added he probably used cut and paste. Chairman Lawrence said that there's a lot going on in this case, so it's to their benefit to overlook certain things because if we overlook it and

pass it, they win. Bob asked if it's an operating sugar shack, and it was confirmed that it is. Chairman Lawrence said the Planning Board thinks of movable buildings differently than one with posts in ground. Bob said garden sheds are not required to meet the setbacks, and Steve said that they do count in coverage. Bob said he doesn't think people should be building right next to the neighbor's property line.

Chairman Lawrence made a motion to close the meeting, and Bob seconded at 7:39 pm.

Kent Lawrence, Chairman