

**Newfields Zoning Board of Adjustment**  
**April 24, 2024**

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

**Guests:** Jason Ward and Kevin M. Baum, counsel for Jason Ward

Chairman Lawrence called the meeting to order at 7pm and introduced the clerk, Hillary Meserve, and the Board Members above. Chairman Lawrence introduced tonight's case:

1. Case #24-03-27-01—A variance application submitted by Hoefle, Phoenix, Gormley & Roberts PLLC, on behalf of applicant Jason Ward, 11 Swamscott St., Newfields, seeks relief from Article III, Schedule 3.4.2-Schedule 2 to allow a 0' side yard setback where 25' is required, a 9.15' front yard setback where 25' is required, and a 19.15' front yard setback where 25' is required, and relief from Article IV Section 4.9 to allow 29.7% building coverage where 25% is permitted. The applicant proposes to construct a 24 x 24 two-story garage and seeks approval for an existing nonconforming sugar shack. The property is located in the Residential Village District, known as Map 102, Lot 26.

Before the application narrative was presented by counsel, Betsy asked to speak. She said that she found the application to be very poorly completed, and she felt it should have been a minimum of two variances. In the current application, they are asking for four, and to tease them out isn't working. Betsy suggested a redo.

Mr. Baum said he understood there was some discussion at the last hearing, and that this was originally filed as two variances: one for the setbacks and one for the building coverage. Because of the rehearing, as they started work on the application, they discovered that there was a sugar shack as well, and so didn't want to overlook that. And since he thinks the goal here for everyone is to get this cleaned up, that was their goal as well and so they did it as a separate application. Some towns do require that you file separate variance applications; some do not. Mr. Baum typically does them together because he finds that the facts often overlap, and so it's easier to present them together and have the Board vote separately. He doesn't want to cause confusion so he's happy to discuss it. He filed it the way they often do, and it was accepted by the Town.

Betsy said yes, you did complete fill out the application, and she knows that splitting the application into two or four variances is redundant but it's government. She said they can reference the same information, but she isn't sure the best way to split. She thinks the sugar shack and the garage shouldn't necessarily be considered with the side yard and the coverage; it's all a mess. You must get a majority vote on all five of these criteria, and she feels the Board would just end up denying the request. She doesn't want to waste anyone's time because the application needs to be sorted out a little bit more. She thinks the best thing to do is to give them another chance to fill out the application, unless the Board disagrees. Chairman Lawrence said he wished he would have seen all the shortcomings of the location, all the ordinances that needed to be addressed, listed whether we heard them as two cases, sugar shack and the garage. They need the whole list, and he wishes that he'd gotten a little better response from the Town Planner to parcel through this, but it really takes a lot of time. Betsy added she

doesn't think it's his place. She said the application looks complete, even if it may not be what we want. Betsy reiterated she doesn't think it's fair to either party to use the current application, and to maybe prioritize and breakout. On one of them the sugar shack and the garage are grouped together. It gets very confusing.

Mr. Baum said he understood, and that he would like some direction. If the Board's opinion is that this would be better or easier received breaking them out, they are happy to do that. Betsy said it would be more accurate. Mr. Baum said he included a list of all the relief needed, and he understands that it gets a little confusing, and that's partially because the sugar shack itself has a roofline that comes out. They tried to make it clear they think the sugar shack is appropriate where it is and deserves relief, but there are alternatives as well that they wanted to make the Board aware which is why there are two distances on the plan. It seems like breaking it out into two applications would be easier. Betsy said the sugar shack is kind of a standalone. Mr. Baum said it could be standalone. Chairman Lawrence said that becomes the dividing line on area coverage. If you remove the sugar shack, you're slightly over with area coverage with the potential garage; with it, you are significantly over. Mr. Baum said he believes without the sugar shack, there would be a need for relief regardless which is another reason we put it together because it does make a difference. He said it really ends up being three requests for relief because if the sugar shack is granted then it's one density request. He thinks he hears the Board's request to break this up and simplify it. It seems to him that doing four separate variances and four separate arguments into separate requests: sugar shack, setback, and density. That seems more confusing in his mind because it's going to be so repetitive, but certainly breaking out the sugar shack and garage make sense to him, and to argue those two again and it would be two variances. But that would be consistent with what was heard and approved by this Board originally.

Mr. Ward said that the only reason they're talking about the sugar shack is because he came here and was given a variance. He went and got a building permit a week later, and had the building inspector look at the concrete, inspect it, etc. And then 29 days later, he was in Wisconsin, and his neighbor told him that they are going to rehear the variance request. He said he already has concrete in the ground. Mr. Ward wasn't even told of the rehearing decision. Chairman Lawrence said there's a note in the notice of decision, whether he read it or not. Mr. Ward said he did notice that at the bottom it says 30 days, somebody can talk about it. All his neighbors haven't said anything about the variance being granted. So, this is why he got a lawyer. Mr. Baum said they understand the 30 days, and that it's unfortunate that the building permit was granted and approved, and the foundation approved, before the rehearing. Mr. Ward said he wants to build a garage in the middle of his lot, angled south-facing so it can get solar coverage and you guys gave it to him, and then you say you want to talk about it again. So, then the lawyer brings up that the sugar shack needs to be given variance because we're dotting all the i's and crossing all the t's, so here we are.

Chairman Lawrence asked for input from Board members whether we are going to hear this as one application where everything is included, or whether we are going to have a preference that we ask them to divide the garage and the sugar shack. Steve said he'd take all this information as one, even though it's confusing. Betsy said that each one is not satisfied due to the criteria. She said we probably couldn't vote for it anyway and she thinks they will come up short because she tried to do it. She added that each one isn't referenced, and that even though some of them are the same, lumping 1 and 2 together, she gets it, but that means you must really pay attention to what you're saying. She doesn't understand the chart where it says see side yard and see front yard. Jack said he wanted to see them separated as well. Scott said that he can see it go either way. Chairman Lawrence asked if he was

comfortable enough with the Newfields ordinances and process to know what we need to do for the investigative part of it. Scott said the burden is on the applicant and added that we can give them guidance over saying to do it over and act on the advice. Betsy brought up the Burke case. Chairman Lawrence said that it wasn't good enough; he had only one shortage and that was coverage to the back of the lot and not area, front of the lot, side of the lot, back of the lot. Betsy said we coached him along a lot. Kent said his fear is that if we do this all at once, something will get skipped, and Betsy agreed. She said she doesn't know what Mr. Ward wants, and he responded that he wants a roof on the concrete that's been sitting in his yard since September. Mr. Baum said he wants the garage, and he wants the sugar shack. Jason shared that Allen Taylor, who built the sugar shack, is dead. Betsy said that she is trying to help. Mr. Ward said that his lot is skinny, and they are talking about 25' setbacks.

Mr. Baum said we want to put the best foot forward to have the best opportunity for success, and he is a little concerned there is a board member that's basically indicated she would not vote favorably on this. He said he has some concerns about that given they haven't had the opportunity to present, but he understands that the Board is trying to help. Chairman Lawrence said the Board members look at the application and the book of ordinances and see what things are failing in this application. Mr. Baum said that they did, and he takes exception to that, but that if it's confusing, he understands. Chairman Lawrence said his Board member has a right to review this, and it's her responsibility to review and to say what she thinks our ordinances are calling for. Whether she is willing to listen to the arguments that you make that cover everything, he thinks she is. Chairman Lawrence said the fact that Betsy has already looked at the application is her job. Mr. Baum said he agrees; his concern is that no decision should have been made yet. He is taking this as an attempt to assist, and so if it is clearer to this Board to separate these out into two applications, they can certainly do that. The goal is to get a positive result and to not cause confusion. He wants to understand, while they're here, what the Board is looking for. He thinks what they've filed is consistent with the requirements and past practices. He doesn't want to come back and not have met what the Board is looking for. Betsy said the diagram didn't have the distance of the intersection to the start of the driveway, and there is in our ordinance that you can't have a driveway 75'. Mr. Baum said this is an existing driveway, and they're not seeking relief for the driveway. Betsy said she understood that, and she's blinking her eyes at the other end of the driveway because that's a cluster. Mr. Baum said it's an existing driveway and they aren't making changes to it. Mr. Baum said for new construction or expansion into nonconforming use. Betsy said the driveway measurement was blank, and Chairman Lawrence said that it's not an issue because it's not a change. Mr. Baum said it's preexisting nonconforming use that can continue. The garage isn't an expansion of use because it doesn't change the driveway or change the number of cars in the driveway, so they don't believe relief is needed for that. Betsy said it's just something she saw. Mr. Baum said it's a concern because he doesn't want to get here next month and learn that the Board thinks there is a need for additional relief. We are here for the garage; we think the original request for the garage was correct, but in preparing this, we realized that the sugar shack was not permitted, and relief is needed. Mr. Ward was asked who built it and when; he responded Allen Taylor in 2009.

Mr. Baum said he thinks it makes sense to file two separate applications. He said the format is going to be similar and there will be a lot of overlap, but they can file to separate applications. He asked in light of the circumstances and in light of the fact that your rules do not require this that he can see, that there are no additional application fees charged. Chairman Lawrence said this will be a continuance if that's what you're asking for. Mr. Ward said he's already paid the fees twice. Mr. Baum said that there are no additional fees at all because this is already in. Chairman Lawrence said that there was hearing and then a request from the Select Board for the rehearing, and he believes that's where that cost came

from. Mr. Baum said sometimes a re-noticing fee is charged. Mr. Ward said he paid the fee twice. Chairman Lawrence said it's the same bulk, but it's written into two different applications. Betsy said let's say the application was incomplete. Chairman Lawrence said he's fine with that and that it does simplify the process and perhaps allows the ability to prioritize stuff should the arguments come to area and coverage. Betsy said considering them all together, how are we supposed to do that? Steve said you will have to decide which one to present first. Chairman Lawrence said that's a good point and counsel will have to prioritize. Mr. Baum said it is only 4% more, and he understands the significant noncompliance changes the numbers.

Chairman Lawrence said given that you are goal-oriented, it might be better to have two applications for this. If that's the case, and you wish to go forward in that direction, I guess it would be your choice to ask for a continuance to do so. Betsy said she understands the point that we haven't heard it, but she thinks it's spinning our wheels to make them go through this whole process when it's not going to hold up. Mr. Baum said he disagrees that it's an incomplete application because it was accepted. If this Board feels that it would be easier and more straightforward for them to consider it as two applications, they are happy to do that. Chairman Lawrence said it would be easier to go through. Mr. Baum said his proposal would be to present the sugar shack, which would be setback only; that would still be under the building coverage. If that was granted, we would seek the building coverage and the garage setback. Chairman Lawrence said your priority might be for the garage, and Mr. Baum responded that they would like approval for both. Betsy laughed, and Jason asked why that is funny. Mr. Baum said that he is concerned that there is some prejudice here. The reason he wants to go with the sugar shack first is because it changes the building coverage percentage, so that if it's granted, we would ask for 1 percentage, and if it's denied we'd be asking for a different coverage percentage. We can ask for larger coverage for the garage; if granted, we'd be covered. He's happy to do it either way, but he'd be dismayed if we started with the garage, and it be denied because the sugar shack is there, and it isn't covered. The goal is to make it less confusing, so he's happy to take direction from the Board. He said this approach hasn't worked in the past, and so we want to make it easier and simpler to move forward. Jack suggested garage first because that's more of an issue, and then have a second hearing based on the sugar shack regardless of criteria but just because the garage is the issue, get that settled first and that would clear the way to deal with the sugar shack on a more independent basis. Mr. Baum said we'd be asking for greater building coverage with the understanding that we are not proposing any change regardless of the sugar shack. We'd be asking for relief for 29.7% building coverage, understanding we would not need that much coverage if relief were not granted for the sugar shack. Betsy asked if they see why this is confusing, and he said he thinks this makes it more confusing. Mr. Baum said the relief chart for this does get confusing. He asked if it's the Board's request that this is separated into two variance applications? One for the garage—the two requests for relief that were previously granted, and a separate application for the sugar shack. Chairman Lawrence said it's his opinion that it would make it easier to parcel each one out individually. He asked if they wanted us to put it to a vote. Mr. Baum asked if the Board has any other feedback for the application. Jack said no. Betsy mentioned the letter from Mr. Baums' office that was addressed to the Portsmouth Board even though it arrived at the Newfields office. Mr. Baum said it's embarrassing but it happens.

Chairman Lawrence made a motion to the Board to divide this into two separate applications, one for the sugar shack and one for the garage, and Betsy seconded. VOTE Yes-5, No-0.

This will be a continuance to the next regularly scheduled ZBA meeting on May 29<sup>th</sup>. Chairman Lawrence made a motion to continue the meeting until May 29<sup>th</sup>, and Betsy seconded. VOTE Yes-5, No-0

**PUBLIC COMMENT**

None.

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

Kent Lawrence, Chairman