

**Town of Newport  
Zoning Board of Adjustment  
November 17, 2022 6:30 PM  
Board of Selectmen's Room/Municipal Building  
15 Sunapee Street/Newport, NH**

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**MEMBERS PRESENT:** Ben Nelson, Chairman; Herbert Tellor, BOS Representative Alternate; Chris Whalen, Scott McCoy, Alternate

**MEMBERS ABSENT:** Tim Beard, Vice Chairman Jeffrey Kessler, BOS Representative; Bert Spaulding, Sr.

**VIDEOGRAPHER:** NCTV

**STAFF PRESENT:** Ms. Donovan, Zoning Administrator

**COMMUNITY MEMBERS PRESENT:** David and Jacquelyn Gamache (abutters Case #1140), Richard Kelley, Lisa Crocker

**CALL TO ORDER:** Chairman Nelson called the meeting to order at 6:31 p.m. followed by a roll call of members present.

**MINUTES:** October 15, 2022

On a motion by Mr. Tellor, seconded by Mr. Whalen; the minutes were tabled to the December 18, 2022 ZBA meeting. *The motion passed 4-0-0.*

**ADMINISTRATION:** none

**CONTINUED BUSINESS:** none

**NEW BUSINESS:**

Chairman Nelson reviewed the ZBA format for the applicants and community members present.

**Case #1139: Cinnamon Street (owner) and Alisa Pepin (Agent):** Request a Special Exception as provided for in Article II Section 210.2 of the Zoning Ordinance to permit a Group Preschool Center. The property is identified as Map 117 Lot 055 and is located at 70 John Stark Highway in the Heavy Commercial (B-2) Zoning District.

Chairman Nelson opened Case #1139.

Chairman Nelson addressed the applicant and asked her to present her case. Ms. Alisa Pepin, Director of Cinnamon Street Childcare stated they were looking to relocate to 70 John Stark Highway. She read aloud her application into the record.

When asked to explain what she proposed to do, Ms. Pepin explained that Cinnamon Street Preschool will be moving into the mall that contains Shaws and Job Lot. They will be located in the old liquor store. The Board members had the following questions:

Were they building a new building in the back corner of the mall? Ms. Pepin stated no, they would be relocated in the old state liquor store. Ms. Pepin stated that in their packets, Board members had a floor plan that had been drawn with the help of their architect. She directed them to the back door which would lead to the play area. She had met with Fire Chief Yannuzzi who stated they would be able to have a fenced-in play area in the back location.

Was there a traffic way in the back for trucks? Ms. Pepin explained the back area and concurred that trucks do pass by; with the proposed configuration, the trucks would still be able to get by. Using a photo in the Board packets, Ms. Pepin explained where the play area would be.

When asked, she stated she had spoken to Fire Chief Yannuzzi about exiting into the play area. He believed their current egress was the best (other doors opened to the inside; not a proper egress).

Chairman Nelson asked if there were abutters that would like to speak. There were none.

He returned to the Board.

Mr. McCoy asked how many square feet the Childcare was proposing (He was referring to the NH Code of Administrative Rules). He was told 3800 sq. ft. Ms. Pepin was asked how many attendees. She stated they

currently have 49 children. In the new space they will be able to have a few more; a (state) licenser will have to come in and set the number. The new space will give them a chance to expand.

Reading her information, Mr. McCoy asked what “stars” were. He was told that Stars was their before and after school program.

Chairman Nelson asked if the number of square feet decides the number of children. He was told yes.

Mr. Whalen asked what the Variance was. Ms. Donovan stated it was a Special Exception. The usage was allowed in the zone with the ZBA’s oversight.

Ms. Pepin explained to the Board that currently they have 3000 sq. ft. She explained the room’s makeup; toddlers and preschool are in one room. With the new location they will have 3800 sq. ft. Toddlers, preschool and school age children will have their own spaces. The pluses at the new location were: enroll more children, expand size of classrooms and be more accessible to the community.

Mr. Tellor stated he was concerned with the front of the building; the pickup and drop off of children. He asked if they were planning on using the fire lane for pickup and drop off. Ms. Pepin stated she had reached out to the owners; a crosswalk and signage could be installed to help with safety. They had also asked the owners about some designated parking spaces for the Childcare. A staff member would be out to assist with the drop off and pickup of children. They were very cautious with the protection and safety of the children.

Mr. Tellor asked for their hours of business. He was told: open at 6:30 a.m., children arrive at 8:30 a.m. Most pickups are between 4:30 p.m. to 5:30 p.m. (some at 3:30 p.m.). Chairman Nelson stated that the 4:30 pm pickup might be difficult (safety-wise). Mr. McCoy asked how the crosswalk would work (like in Town or in parking lot). Ms. Donovan explained it would be a private sidewalk; people would not be required to stop. There was further discussion by the Board members on safety and the need for a suitable plan for pickup and drop off to be written. The plan is to be approved by the Fire Marshall (Fire Chief Yannuzzi). Mr. McCoy asked what the process was for a CO (Certificate of Occupancy). Ms. Donovan stated an inspection by the 1. Safety Marshall, 2. Fire Chief, 3. Herself. Ms. Donovan told the Board that the state also regulated the Childcare and its practices. She addressed the Chairman and said they could request a drop-off and pick-up plan as well as a condition on the play area. When asked, Ms. Pepin said that the state would have to come and sign off on all procedures and aspects of the center, inside and out. There was no further discussion or questions from the Board.

Chairman Nelson closed the hearing to the public. He asked for a motion to go into Deliberations. Mr. Tellor made a motion *to go into Deliberations*. It was seconded by Mr. Whalen. ***The motion passed 4-0-0.***

#### Zoning Board of Adjustment Special Exception

##### Standard A

Mr. McCoy made a motion that: ***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.*** It was seconded by Mr. Tellor. ***The motion passed 4-0-0.***

##### Standard B

Mr. Whalen made a motion that: ***The proposed use will not be injurious, noxious or offensive or in any way detrimental to the neighborhood. Standard B has been met.*** It was seconded by Mr. Tellor. ***The motion passed 4-0-0.***

##### Standard C

Mr. Whalen made the motion that: ***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. With the condition that a suitable heavy barrier be used around the playground to protect the kids from vehicle traffic and a suitable plan for drop off and pick up of children to protect them from traffic be drawn up and approved by the state and Newport Safety Officer. Standard C has been met.*** It was seconded by Mr. Tellor. ***The motion passed 4-0-0.***

Chairman Nelson asked for a motion to memorialize the Board’s decision.

Mr. Whalen made a motion *to approve a Special Exception for Case #1139 with the condition that a suitable heavy barrier is used around the playground to protect the kids from vehicle traffic and a suitable plan for drop-off and pick-up of children to protect them from traffic be drawn up and approved by the state and*

*Newport Safety Officer.* It was seconded by Mr. Tellor. ***The motion passed 4-0-0.*** Chairman Nelson congratulated Ms. Pepin.

Ms. Donovan told Ms. Pepin her Notice of Decision would be ready within 5 business days.

**Case #1140: Richard and Dale Kelley (Owner) Doug Campbell (Agent):** Request a Variance from the terms of Article IV Section 409.7 of the Zoning Ordinance to reduce the 50' setback to permit a reduction in the required off street parking. The property is identified as Map 111 Lot 174 and is located at 76 Sunapee Street in the Heavy Commercial (B-2) Zoning District.

Chairman Nelson opened Case #1140. He addressed the applicant, Mr. Doug Campbell and asked him to explain his proposal to the Board.

Mr. Campbell gave an overview of the project. He plans to convert the Auto Parts store into apartments (between 7 and 9 apartments). He stated he planned on having three apartments on the second floor. He stated there are currently nine parking spots at the site. To make it economically suitable he could not make more than the nine. His current plan is also to do some beautification in the front. He requested one spot per unit, with the intention of having nine apartments. He cited a study done by NH Housing which found that people have less than 1 car. He informed the Board that the apartments will be one bedroom and efficiencies. He cited the study by NH Housing showing people don't have one car. He told the Board that was his request.

- ❖ Mr. McCoy stated that the variance was requesting to cut the required parking places by half.

Mr. Campbell said yes.

- ❖ He asked to see the plan; he did not see it (in his packet). Mr. McCoy stated he was not familiar with the study Mr. Campbell was citing. He asked if Mr. Campbell had a copy of it.

Mr. Campbell showed them a piece of paper; he stated it had the results (of the study). Mr. McCoy said he needed to see the study.

- ❖ Board members asked for a copy of the study he referenced and where it took place.

Mr. Campbell did not have the study or the plan for the Board members.

Mr. McCoy asked if he was expected to read it at the meeting. He needed time to study it. Mr. Campbell addressed Mr. McCoy and gave conflicting information about the results and length of the study. Mr. McCoy stated that he did not have enough information to make a decision. Mr. Campbell said that the apartments would be efficiencies and one bedroom apartments. Mr. McCoy said that he understood (the sizes).

Chairman Nelson addressed the abutters in attendance and asked if they would like to speak. Mr. David Gamache, 175 Summer Street addressed the Chair. He and his wife had the only single family house in the neighborhood. They understand the need for housing. They understand they live in a multi-unit neighborhood. They already have people using their driveway for parking. They have had friends ticketed if they have parked across the street (municipal parking lot). Mrs. Gamache said they didn't have enough room for visitors to park. Their concern is with the reduction in parking spots, what is going to happen to parking in general? They did not like the thought of additional vehicles they would have to contend with (that had no place to park due to the approved variance). They would have to have them towed. She was concerned because the property lines are so narrow.

- ❖ Mr. McCoy asked about the property lines.

Mr. Campbell said there was an easement behind the building. Mrs. Gamache said it stated in their deed it was a Right of Way. Continuing, she stated that due to her husband's employment she would be responsible for snow removal and the monitoring of vehicles. They had a very good relationship with the current owner. They did not want it changed.

Mr. Kelley, owner of 76 Sunapee Street, told the Board about the boundary lines on the property, parking by residents in the multifamily apartments as well as the Gamache's. He said they were wonderful neighbors. Addressing the Chair he said there was room for parking on the west side of the building.

- ❖ When asked for clarification about the number of one bedroom apartments and efficiencies he would have in the building; Mr. Campbell said he did not have the number.
- ❖ Board members asked Mr. Campbell for a visual (site plan) of his proposed. They did not have one in their packets. Mr. Campbell showed them a proposed diagram he believed would work.
- ❖ Mr. Tellor said efficiency would have one vehicle; a one bedroom would have two.

Mr. Campbell claimed there were data and other studies that supported fewer vehicles.

Ms. Donovan said there was a lot of pressure by the state for towns to ease their restrictions. Ms. Donovan and the Board discussed the number of parking spaces currently needed and potential future needs.

- ❖ Chairman Nelson asked where the snow would go.

Mr. Campbell did not have a snow removal plan.

- ❖ Chairman Nelson said he did not have room for another parking spot. He would have to pick up the snow and cart it away.

Mr. Campbell said he would make it work.

- ❖ Mr. McCoy repeated that he would like to see the study. The applicant is saying he has done it before; he will make it work. Mr. McCoy wanted to see the study. The proposal is sketchy; nice idea, but no answers (alternatives? snow removal?).

They spoke about a different case in which parking spaces had been altered in size and in number.

Chairman Nelson polled the Board members as to what they would like to do; recess for a week (or date/time specific).

Mr. McCoy stated he did not have enough information.

1. He sees a potential plan; the applicant said he could come up with another: he would like to see that.
2. Mr. McCoy would like to see the studies, not a single page printout.
3. The applicant said 7 to 9 apartments. He wanted a definitive number.

Mr. Campbell gave the amount of money it would take to renovate the building into apartments. He did not know if he could build 7 or 9 apartments.

4. Mr. McCoy again said the ZBA did not know how many apartments were going in.

Mr. Tellor asked;

- 1) In order to be economically feasible, how many apartments would the applicant need to have 7? Mr. Campbell said 7 was the minimum. Otherwise he would walk away.
- 2) Mr. Campbell was asked about the architectural design: a central hallway? Mr. Campbell said he was still working on the design.

The Board was asked if they wanted to continue the case. It will give them time to review the study and if it's applicable to Newport. They would also like a definite number of apartments and a plan showing the proposed building schedule.

Mr. Campbell said he might get 4 efficiencies and 5 one bedroom apartments.

Chairman Nelson addressed the Board and said they had two choices: Deliberate or postpone date/time certain.

Mr. Tellor said he would like to see the study as well. There was a discussion on the use of the study to provide dimensions for parking spaces and the number of spaces per unit. Those in the study were in areas with excellent public transit; not like Newport. They continued discussion, citing the city of Manchester as an example for the study.

Mr. Kelley addressed the Chairman, approached the Board and showed them photos on his cell phone of cars parked at the building. He answered all questions from the Board members.

Mr. Whalen made a motion *to go into Deliberations*. It was seconded by Mr. Tellor. ***The motion passed 4-0-0.***

The ZBA deliberated on the number of parking spaces, policing their use, inclusion in rental leases.

Chairman Nelson asked for motions on prongs one through five.

**Variance Statement of Reasons and Discussion**

Mr. Whalen made a motion that: *Granting the Variance would not be contrary to the public interest because 1.5 parking spaces per unit would not be contrary to the public interest because it provides additional housing at 1.5 parking spaces.* It was seconded by Mr. Tellor. Chairman Nelson called for a vote. *The motion passed 4-0-0.*

Mr. Whalen made a motion that: *The spirit of the ordinance would be observed because each apartment will be provided sufficient parking.* It was seconded by Mr. Tellor. Chairman Nelson called for a vote. *The motion passed 4-0-0.*

Mr. McCoy made a motion that: *Granting the Variance would do substantial justice because it provides adequate parking for the housing that would be done.* It was seconded by Mr. Tellor. Chairman Nelson called for a vote. *The motion passed 4-0-0.*

Mr. Whalen made a motion that: *The values of the surrounding properties would not be diminished because it will be an improved property and is a multi-unit apartment as is the neighborhood.* It was seconded by Mr. Tellor. Chairman Nelson called for a vote. *The motion passed 4-0-0.*

**Unnecessary hardship**

Mr. Whalen made a motion: 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.i. 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 not viable in the setting and*

AND:

*A.ii. that the proposed use is a reasonable one because there is currently not enough room for the amount of parking required in the ordinance.* It was seconded by Mr. McCoy. There was no discussion. Chairman Nelson called for a vote. *The motion passed 4-0-0.*

Chairman Nelson called for a motion to memorialize the decision of the ZBA to grant the Variance. Mr. Tellor made a motion that *the Board grants the Variance for Case #1140 as presented with the condition that there will be 1.5 parking spaces per unit that measure 9'x18'*. It was seconded by Mr. McCoy. Chairman Nelson called for a vote. *The motion passed 4-0-0.*

Ms. Donovan will have the signed Notice of Decision for Mr. Campbell within 5 business days.

Chairman Nelson called for a motion to adjourn the meeting.

On a motion by Mr. Whalen, seconded by Mr. Tellor; *the Board voted to adjourn at 8:03 p.m. The motion passed 4-0-0.*

Respectfully submitted,



Maura Stetson, Scribe

Approved on: March 16, 2023

The next meeting of the ZBA will be on December 15, 2022 at 6:30 pm in the Board of Selectmen Room.