

**Zoning Board of Adjustment  
September 19, 2019 6:30 PM  
Board of Selectmen's Room/Municipal Building  
15 Sunapee Street/Newport, NH**

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**PRESENT:** Melissa Saccento Chairman; Beth Cassorla, Ben Nelson, Jeffrey Kessler, BOS Representative; Tim Beard, Alternate

**ABSENT MEMBERS:** Virginia Irwin, Alternate; Scott McCoy, Alternate

**VIDEOGRAPHER:** NCTV

**STAFF PRESENT:** Liz Emerson, Zoning Administrator

**COMMUNITY MEMBERS PRESENT:** Christy Whipple, Louis Cassorla, Ansel Cassorla, and Alden Stark, Sydney Lorangeau, David Lamontage, Craig Mills, Frieda Winter, Norris Learnard, abutters

**CALL TO ORDER:** Chairman Saccento called the meeting of the ZBA to order at 6:30 p.m. and introduced the sitting Board members. Mr. Beard was appointed to sit for the empty seat.

**ADMINISTRATION:** none

**MINUTES:** August 15, 2019

August 15, 2019

On a motion by Mrs. Cassorla, seconded by Mr. Kessler; *the Board voted to approve the minutes of the August 15, 2019 meeting as presented. The motion passed 4-0-1 (Nelson abstained).*

Chairman Saccento addressed the public in attendance and stated the ZBA format, explaining when they would have a chance to speak about Case #1080 through the Chair.

**Case #1080: United Construction Corp. (Owner) Cary Whipple (Agent):** request a Variance from the terms of Article 2 Section 206.1 & 207.1 of the Zoning Ordinance to permit two-family dwelling units built in the Sugar Brook Subdivision. The properties are identified as Map 119 Lots 65-71, Map 120 Lots 01-07, Map 120 Lot 15, Map 121 Lots 05-09, and Map 121 Lots 22-24 and is located on Brook View Road and River View Road in the Rural (R) and Single Family (R-1) Zoning Districts.

Chairman Saccento opened Case #1080.

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.

Chairman Saccento asked Ms. Emerson if the subdivision had personal septic and Town water. Ms. Emerson stated she was correct.

Chairman Saccento addressed Mr. Cary Whipple and asked him to present his case. Mr. Whipple addressed the Board and indicated on an enlarged map of the Sugar Brook subdivision the lots that were in question with the Variance request.

Mr. Whipple stated that what United Construction was looking to do was to have the option to increase the population and structure density to current zoning codes. When they had originally created the subdivision they had met the previous codes. United Construction could now go in and redesign the development with a much higher density. It was his opinion that they could put in some duplexes or have options to put in duplexes. United Construction is asking for the use of current code and density for the subdivision in order to better market the lots.

Mr. Whipple compared proposed single homes versus duplex homes on the Sugar Brook Development lots and showed an illustration of an existing condominium and a duplex in Newport R-1 Zoning.

Chairman Saccento asked the Board members if they had any questions.

Mr. Beard addressed Mr. Whipple and stated he had showed the Board the Oak Street Condominiums as an example (of what might be built).

- Was Mr. Whipple proposing a development like a condominium, with one or two units each?
- Would they be rented?
- Would the owner live onsite?
- Would Mr. Whipple sell the lots to an individual as an investment and having these options? *Mr. Whipple said the buyer would have all the options Mr. Beard had listed.*

Chairman Saccento addressed Mr. Whipple and asked if there were two owners (duplex situation) would the current lot be split between the two units. Mr. Kessler, Board member, stated it was a legal issue, not in the ZBA purview.

Mr. Whipple stated that individuals would split land, septic and site work costs. The building would be affordable for someone who would otherwise not be able to buy a single family home.

Chairman Saccento asked about the affordability of ADUs. She asked if that was what Mr. Whipple was thinking of. *Mr. Whipple stated that he would let the "market" speak for itself. Granting the variance gives more options to the buyers.*

Mr. Beard asked if they would be attached houses or would they be two houses on one lot. Mr. Whipple said that would be up to the owners. Mr. Nelson reiterated Mr. Beard's question. *Mr. Whipple stated that the houses would be attached.*

For the spirit of the ordinance United Construction wanted the houses to look as one unit. They were sensitive to the feelings of the residents in Sugar Brook.

Mr. Kessler asked Mr. Whipple how septic costs would work in a duplex. He asked if there would be a shared septic system, two septic systems and if there was room for two septic systems on a lot.

*Mr. Whipple said he would recommend a shared septic system. It was more affordable.* Mr. Kessler stated that that would be part of the legal agreement. *Mr. Whipple concurred.*

There was a short discussion on the size of the lots in the development and septic systems in it.

Mrs. Cassorla addressed Mr. Whipple and stated he wanted the buyer to have the option to build a single family or a duplex home. *She was told yes.*

Mr. Whipple stated potential investors would have another reason to buy at Sugar Brook. It was not an original idea. He commented that the housing market in Newport has increased. It was time to get on board.

Mrs. Cassorla asked Mr. Whipple if the potential for all the lots to have duplexes was there and Mr. Whipple wanted to get the variance for potential investors. *She was told yes.*

Mr. Whipple explained that there were people in entry level jobs that needed affordable housing. There was nothing in the Upper Valley.

Mr. Nelson stated that the Master Plan stated Newport needed affordable housing. Everyone concurred with his statement.

For clarification, Mr. Beard asked if the duplexes would be two-family dwellings. *Mr. Whipple agreed with his statement.*

Chairman Saccento asked if there were abutters present who would speak in favor of the project.

Mr. Alden Stark addressed the Board and stated that Newport needed to start building housing for Dartmouth Hitchcock employees, etc. Newport is one of the locations that has the ability to create the housing for them. He did not want to see a “slum lord” community abutting his property. Mr. Stark did not know if United Construction was planning on building or only investing in the Sugar Brook Development.

Mr. Whipple said there are strict rules in the Sugar Brook Development. There is a covenant that the residents have to abide by. There are controls in the development that will help control what happens with the duplexes.

Mr. Kessler asked what the estimated rent an investor (of a duplex) would need to charge to make their investment viable. Mr. Whipple said *\$1800-\$2000 a month would be needed to cover their expenses. Rent would be a couple thousand dollars a month. The development layout is not designed for low rent.*

There was a general discussion among the Board and Mr. Whipple on the general building costs (\$200,000) and clientele who would live there.

Chairman Saccento addressed the public in attendance and asked if there was anyone who wanted to speak.

Mr. Norris Learnard introduced himself to the Board members. He had been a teacher at Towle High School and a resident of Birchwood Grove for fifty years. He read aloud, paraphrasing a letter he had written to the ZBA concerning the proposed sale of lots in the Sugar Brook Subdivision. He submitted his letter to the Board members and asked that they read the whole letter before voting on Case #1080 (see complete letter in the Zoning Board file). He told the ZBA that Birchwood Grove residents have had to fight several time to keep their lots designated R-1 (single family homes). He stated that the only reason that United Construction was given approval for the Sugar Brook Development was the condition to have all lots R-1 single family units. The lots are large because the Town of Newport forced them to build them that way initially.

He listed things that would impact the abutters and Birchwood Grove residents:

- ❖ Negative impact on town services: water and school system.
- ❖ Generate transient renters, rather than owners.
- ❖ Values diminished (in Birchwood Grove). Potential deterioration of residences as has happened in other areas in Newport with multi-dwellings.

He listed the following against United Construction's variance request:

- ❖ It is contrary to the original approval allowing the development.
- ❖ Substantial justice implies injustice in asking United Construction to follow the original rules that it agreed to follow in the original construction of the development.

The residents of Birchwood Grove want to keep the original regulations stipulated to United Construction as they are.

Mrs. Frieda Winter asked for a definition of markings (a red line went over her abutting property) on the Sugar Brook map she had received as an abutter. Ms. Emerson explained the line in question.

Mrs. Winter asked if there was a rear setback for her property and the Sugar Brook lot that abuts her. Ms. Emerson stated it was 25' from her lot line.

Mr. David Lamontage said there had been discussion which stated the cost of buildings in Sugar Brook would be substantial and the amount the rent would be substantial. He asked what kind of law was in place to limit the number of people in a house (group of unrelated people to share costs). He was concerned about that.

Ms. Emerson addressed the Board and stated there was no Zoning Regulation concerning this. It was in check by:

1. Local Building Inspectors state an occupancy number (certificate of occupancy).
2. An excess number of people would be a fire hazard; the fire marshal would be contacted.

Mr. Lamontage stated he has seen more residents than is allowed happen in the cities. The infractions go unchecked. Therefore he had asked the question of an existing law or ordinance. There was a general discussion on this and policing by the Board members.

Mr. Sydney Lorandeanu addressed the Board and stated that the original development allowed sixty three (63) lots. Mr. Whipple's request will increase this number by 23 additional units (36%). It was not a small increase in occupancy or density. Mr. Lorandeanu stated he abutted three Sugar Brook lots. He has the potential of six new units (neighbors) which will abut his property. Mr. Lorandeanu stated he felt it was doing an injustice to Birchwood Grove residents, especially since United Construction did not spread the proposed duplex units throughout the development.

Mr. Lorandeanu stated duplex and owner occupied rentals were not allowed in the Zoning District. There had been talk at the meeting that it was beneficial because it was workforce housing. He stated that \$2,000+/mo. was not workforce housing rent. That benefit does not exist in the proposal.

Mr. Lorandean asked why the case was not at the Planning Board with the size of the potential change.

- Potentially 1/3 more traffic
- Double the sewage load (from original plan)
- The prong of hardship for United Construction is not there; currently it is for single families, they don't need to change it.

The case has a lot more changes than letting United Construction build some duplexes.

Ms. Emerson was acknowledged. She explained that if Sugar Brook became a commercial development, United Construction would have to go before the Planning Board as well. An example would be if they developed all the lots at once they would have to get approval of the Planning Board. If they do it one by one, they do not.

Mr. Beard asked, out of 63 lots how many have been sold. Forty two were not sold. Mr. Whipple was asking for sixteen lots to have the potential of having a duplex. He hasn't sold a lot in many years. He is therefore looking for alternative options for selling the lots.

Mr. Kessler asked if the ZBA had a map showing the breakdown between the R and R-1 Districts. When asked, Ms. Emerson said it was currently allowed in R-2 (general residential) more to the center of Town.

Chairman Saccento asked the Board members if they had questions of the abutters.

Mr. Kessler addressed the abutters and asked if anyone rented a house in Birchwood Grove or if they were all owner occupied. He was told there was one rental that was known. There were 100 units.

Mr. Kessler asked how the renters have been. He was told that it was renter owned; it was a revolving door. Mr. Kessler asked if the rental property has been detrimental to the rest of the properties in Birchwood Grove. He was told that there had not been enough rentals to tell, there were 100 units in the Grove.

Mr. Kessler asked the Board members what the difference was between a duplex unit and a single family home with an ADU (accessory dwelling unit) attached. There was discussion by the Board on this distinction. Mr. Kessler stated he did not see a difference between a duplex and a house with an ADU. He read the definition of an ADU into the record. The Board continued their discussion on the map of the Development.

Chairman Saccento acknowledged Mr. Lorandean.

Mr. Lorandean addressed Mr. Kessler and stated that from the information the abutters had been given it was a stretch to call them accessory dwelling units. Chairman Saccento addressed Mr. Saccento for comment. Mr. Kessler had none.

Chairman Saccento acknowledged Mr. Craig Mills.

Mr. Mills stated that his neighbors had voiced his concerns. He reiterated the concern that if the two family housing units were allowed in the Sugar Brook Development, it would be a significant density increase than what is currently there.

Chairman Saccento addressed Ms. Emerson and asked if the rules for density of developments have changed (increased), and that is why Mr. Whipple and United Construction was at the ZBA because they have this option (a cluster development). Ms. Emerson agreed.

There was a general discussion on the development, the size of the lots, roads, road frontage.

Mr. Lorandean addressed the ZBA and stated they were talking about density but were not talking about the potential changes. He reiterated:

- More traffic
- Double the sewage load (from original plan)
- Double the water usage
- Increase in the school system

Chairman Saccento addressed Mr. Whipple and asked if he would like to speak to anything that abutters had brought up.

Mr. Whipple said that the Association at Sugar Brook has rigid bylaws that will address most of the abutter concerns. He could get a copy of the bylaws to the abutters. Currently, United Construction has full control of the bylaws. If there was something they could add to the bylaws to reduce concerns such as increase the setback to 50 feet (as other lots have) they have the ability to do that in the envelop of the bylaws. He encouraged the abutters to contact him.

Mr. Whipple was asked if the bylaws currently allow non-owner occupied units in the development. Mr. Whipple did not know.

Mr. Kessler found the definition for density in cluster developments. He read it into the record. Ms. Emerson stated the number listed in the definition was for a boarding house.

There was a lengthy discussion on Birchwood Grove, Sugar Brook, density and the need for affordable housing in Newport.

Mr. Whipple pointed out to the ZBA that there was 30% dedicated greenspace in the development as was required.

Chairman Saccento addressed the abutters and asked if the rear setbacks were increased to 50 feet would they feel better about the proposal.

Mr. Lorandean said the condition of 25 ft. or 50ft. and the lot needs to stay wooded would improve things. If the lot was clear cut, increasing the setback would not improve things.

Mr. Learnard said that the effect on his property was more of a concern. United Construction claimed there will not be a devaluation of land. But they don't want duplexes built next to their current properties or the whole development would be included in this (duplex) plan.

Chairman Saccento asked if the covenant for the Birchwood Grove subdivision prohibited duplexes. She was told through the zoning regulations they are.

Mr. Beard addressed the abutters and asked if they only had issue with the lots that abutted them or with all the lots that might potentially be duplexes.

Mr. Learnard stated that if there were duplexes on both sides of the road it would be worse.

There was a lengthy discussion on the placement of potential duplex lots, hypothetical prices of lots, subdividing in the development as well as community growth.

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 #1080. The motion passed 5-0-0.***

#### **Variance Statement of Reasons and Discussion**

There was a discussion on the density of Birchwood Grove and proposed increased density. Mr. Kessler stated the Board of Selectmen looked to see how to benefit the community economically. The proposed cost of the Sugar Brook properties will not drive down the value of lots in Birchwood Grove.

Mr. Nelson addressed the BOS Representative. He stated that he understood that Sugar Brook was not workforce housing but it would be more affordable housing. Mr. Nelson had heard that one Selectman was fairly negative on the Newport Mills because of more people and increase burden on the school system. Mr. Nelson asked if that was one Selectman opinion or the Board opinion. He was told it was the one Selectman's opinion. Mr. Nelson reiterated, saying that the Selectman was negative about an increase in people into the community and school system.

The ZBA members held a lengthy discussion on the need for good, affordable rental units in Newport. It is in the Master Plan, it is a real need.

Mr. Nelson gave his suggestion for a condition to the request for a variance. He stated he was ready for deliberations. There was a discussion on Mr. Nelson's suggested condition.

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

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

***Granting the variance would not be contrary to the public interest because the density will not violate our current zoning laws. The motion passed 5-0-0.***

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

***The spirit of the ordinance would be observed because accessory dwelling units are already permitted by special exception.*** Mrs. Cassorla added that the Town's Master Plan is always looking for new ways to bring affordable housing to Newport.

The amended prong stated:

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

***The spirit of the ordinance would be observed because accessory dwelling units are already permitted by special exception and the Town's Master Plan is always looking for new ways to bring affordable housing to Newport. The motion passed 5-0-0.***

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

***Granting the variance would do substantial justice because it would potentially increase the housing stock in Newport, meet with the Master Plan and increase workforce housing.*** In discussion Chairman Saccento stated the buyers could split the lots and create the same effect. Either way it could be done. Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

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

***For the following reasons, the values of the surrounding properties would not be diminished: It would increase their value because they (Birchwood Grove) would have newer, higher value houses surrounding them.*** In discussion, Mr. Kessler stated that the newer houses costing more would allow the houses in Birchwood Grove to increase their property value. Chairman Saccento called for a vote. ***The motion passed 5-0-0.***

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:

On a motion by Mr. Kessler, seconded by Mr. Beard 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 we already allow accessory dwelling units (ADUs) by special exception.*** In discussion, Mrs. Cassorla stated that the lots were not going to be marketed as duplex lots; they could be for single family or duplex homes. There was a general discussion on the lots and marketing.

AND:

On a motion by Mr. Kessler, seconded by Mrs. Cassorla that: ***The proposed use is a reasonable one because: it will increase the housing stock and increase the values of the surrounding properties.***

Chairman Saccento called for a vote. The first part of the hardship question had not been voted on. Chairman Saccento called for a vote on each part.

Chairman Saccento called for a vote on the first part. ***The motion passed 5-0-0.***

Chairman Saccento called for a vote on the second part. ***The motion passed 5-0-0.***

The Board voted to memorialize the decision of the ZBA to grant the Variance. On a motion by Mrs. Cassorla, seconded by Mr. Kessler; ***the Board voted to grant the Variance for Case #1080 to permit two family dwelling units in the Sugar Brook subdivision with the provision that:***

- ***The rear setback be set to 50 feet (versus the required 25 feet) and***
- ***That the rear setback remains wooded on the lots directly abutting Birchwood Grove.***

Chairman Saccento called for a vote. ***The motion passed 5-0-0.***



Mrs. Beth Cassorla told the Zoning Board and Town of Newport that it has been a pleasure serving on the ZBA and with the Board members. She was sorry to leave; it was out of the necessity of moving. Chairman Saccento told Mrs. Cassorla that she has been an asset to the (Zoning) Board and that she will be missed.

Mr. Cary Whipple thanked the Board.

On a motion by Mrs. Cassorla, seconded by Mr. Beard; ***the Board voted to adjourn at 8:13 pm. The motion passed 4-0-0.***

Respectfully submitted,

Maura Stetson  
Scribe

Approved on: October XX, 2019