

Zoning Board of Adjustment
February 20, 2020 6:30 PM
Board of Selectmen's Room/Municipal Building
15 Sunapee Street/Newport, NH

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

ABSENT MEMBERS: Scott McCoy, Alternate; Tim Beard

VIDEOGRAPHER: John Lunn and Jeffery White, NCTV

STAFF PRESENT: Christina Donovan, Zoning Administrator

COMMUNITY MEMBERS PRESENT: Robert Howard (abutter), Tyler Powell (abutter), Paul Hamilton (abutter); Tom Frawley, Summit Distributing

CALL TO ORDER: Chairman Saccento called the meeting of the ZBA to order at 6:33 p.m. Chairman Saccento introduced herself and the sitting Board members.

Chairman Saccento stated that It had been explained to the applicants that there was a quorum of only three Board members at the meeting and if one member voted against their case it was automatically denied. The applicants had the option to continue or request a rescheduling of their case until such time as there was a ZBA quorum of four or five members. Otherwise, if the ZBA denied the request, the applicant could not appeal solely for the fact that there was only a three member quorum. Addressing the applicants present, Chairman Saccento asked if they would like to carry on with their case or withdraw to another meeting. Applicants from both cases agreed to have their case heard at the February 20, 2020 meeting.

ADMINISTRATION: Zoning Administrator Christina Donovan gave an update on Case #1084 and the progress of the conditions that the Board had set concerning parking and change of usage DOT approval.

MINUTES: January 20, 2020

January 20, 2020

On a motion by Mr. Kessler, seconded by Mr. Nelson; ***the Board voted to approve the ZBA minutes of the January 30, 2020 meeting as presented.*** In discussion, the use of the word bakery in the minutes was questioned. It was stated that the application as written stated bakery, not takeout food. ***The motion passed 3-0-0.***

NEW BUSINESS:

Case #1085: 169 Sunapee Street, LLC; Ronald K. DeCola(Owner) request a Variance to the terms of Article II, Section 207 of the Zoning Ordinance to permit building a Cluster Development in an R-1 Zone. The property is identified as Map 112 Lot 045 and is located on Parkview Street in the Rural (R), Single Family Residential (R-1) Zoning Districts.

Chairman Saccento opened the public hearing.

Chairman Saccento acknowledged Mr. Ronald K. DeCola, owner. He introduced himself to the Board and viewers. He requested that the abutters present have copies of the map he was using in his presentation. Mr. DeCola explained the property he owned which included the Newport Mills, the hydro

generator station and the parcel of land across the river from the Mill, lot 045. It was 4.96 acres off Parkview Street. He was before the ZBA to request both a Variance and a Special Exception. The Variance was for a cluster development in a Single-Family Residential (R-1) Zone. If granted: The Special Exception was for a cluster development in a Rural Zone.

Mr. DeCola explained his prospective layout in the two zones and how if necessary he would relocate it into one zone (all aspects of the project would be congested). He pointed out the power line easement on the map as well as the nature trail (used by “sleds” in the winter).

He explained to the Board that the hardship was that he was in a split zone. He reiterated that he was asking for a cluster development in an R-1 Zone (for a variance), and the R Zone which would be the Special Exception.

Mr. DeCola explained the concept, including number of duplex condo units, size of units, use of Town water and sewer, private driveway. Similar units cater to adults and retirees.

Chairman Saccento asked if it was a cluster development or a condo. She stated that clusters are single, unattached family homes. She was told cluster is a form of development; condominium is a form of ownership. Both are mentioned in the Newport 2012 Master Plan.

There was a short discussion between the applicant and abutters on the water and sewer hookups for the proposed development.

Chairman Saccento informed the abutters and applicant that all conversation needed to go through the ZBA Chairman.

Chairman Saccento addressed Mr. DeCola and asked where the 100' line for development was on her map. Mr. DeCola admitted that the map he had provided the ZBA was not to scale. He reiterated that similar units cater to retirees and the elderly.

Chairman Saccento asked if he had done any traffic studies of the area. The development would double the traffic on the road. Mr. DeCola stated that he believed a study was overkill for ten units.

The abutters stated increased traffic was one thing they were concerned about. Chairman Saccento addressed the abutters and stated they would have a chance to state their concerns. Chairman Saccento continued, asking if Mr. DeCola had spoken with the Highway Department (Bill Scanlon). Increased traffic was a concern to her.

Mr. DeCola said that they could skip the Variance and build the cluster development on one (the R-1) Zoning District. Chairman Saccento understood Mr. DeCola's strategy.

There was further discussion on potential increased traffic and ownership of cars.

Mr. Nelson stated that the ZBA could grant the variance with the condition that a traffic study be done.

Chairman Saccento opened the hearing to the public.

Mr. Robert Howard, abutter Lot 047, stated that the wildlife on Lot 045 meant a lot to everyone on the street. They enjoy the surrounding woods. It was his opinion that the proposed development seemed extreme for the area of Town.

Mr. Paul Hamilton, abutter Lots 051-052, stated he had the same issue with the traffic as the Chairman's concerns. There was a lot of traffic by individuals that don't live on the street. The residents all have children, therefore their concern with the traffic. Mr. Hamilton expressed his concern with the proposed road that would come out onto Parkview Street, the drainage and the condition of the road he has experienced during the winter time.

Chairman Saccento and Mr. Nelson asked if the driveway entrance could be moved with the existing topography.

Mr. DeCola and Mr. Hamilton explained the swale and running water on the property prevented movement of the driveway. Mr. DeCola said he could look at its movement with the Planning Board.

Mr. DeCola stated he understood the abutters concerns and he could look into resolving them with the Planning Board.

Mr. Hamilton asked what would happen to the tax base when the development was put in. He was told it was new residential construction. It would not hurt it. Mr. Hamilton stated that it would increase the residential taxes around the development. That was a concern of the neighbors as well. Mr. DeCola stated he could not speak about assessment by the Town.

Mr. Hamilton asked if they would be duplexes or condominiums. He was told they would be duplexes but condominiums. Owners would have a one tenth interest in the property. Addressing the Chair, Mr. DeCola stated the owners would be on water and sewer, same as the surrounding residents. There was a discussion on Town water and sewer.

Chairman Saccento addressed the public and asked if there were any further questions. There were none. Chairman Saccento addressed the Board and asked for further questions. There were none.

Mr. DeCola stated for the record that Mr. Kevin Penderson had approached Mr. Robert Howard about buying the land.

Mr. Kessler addressed the abutters and asked about the traffic on the street besides residents. He was told there was resident traffic as well as through traffic. When questioned why, he was told to bypass the hill. Tractor trailers continuously got stuck on the street as well.

Mr. Kessler stated the traffic was caused by issues on the main road. He was told some of it, but there was a lot of drive through traffic as well. The cars speeded. Mr. Kessler and the abutters discussed the traffic, traffic patterns and future tax assessment in the neighborhood and Town.

Mr. Nelson said that Mr. DeCola stressed homes for the elderly; he could also see them as starter homes for young families.

There was a general discussion between the Board, applicant and abutters concerning the case and neighborhood.

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. The motion passed 3-0-0.*

Variance Statement of Reasons and Discussion

Chairman Saccento and Mr. Nelson both reiterated their concern with increased traffic. Chairman Saccento asked for motions on questions one through five.

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

Granting the variance would not be contrary to the public interest because: it would provide additional housing in Town in the residential zones. In discussion, Mr. Nelson stated Mr. DeCola was stressing elderly housing; Mr. Nelson was looking at it as starter housing. Chairman Saccento commented that it would be accessible (one floor), too. Chairman Saccento called for a vote. ***The motion passed 3-0-0.***

Chairman Saccento asked if the Master Plan addressed housing in this area, or only Newport in general. When asked, Mr. DeCola stated that the Master Plan did speak to cluster development. Chairman Saccento stated it was in general. Mr. Nelson stated it used less space.

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

The spirit of the ordinance would be observed because cluster housing is addressed in the Newport Zoning Ordinance and is in the Master Plan. Chairman Saccento called for a vote. ***The motion passed 3-0-0.***

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

Granting the variance would do substantial justice because they cannot move the development back onto the property because they were trying to preserve wildlife habitat as well as the easement for the electric lines. There was no discussion. Chairman Saccento called for a vote. ***The motion passed 3-0-0.***

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

The values of the surrounding properties would not be diminished because new construction would increase the values of the surrounding properties.

There was no discussion. Chairman Saccento called for a vote. ***The motion passed 3-0-0.***

Unnecessary hardship:

Mr. Kessler made a motion that:

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:

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 the property straddles the Rural (R) and Single-Family Residential(R-1) Zones and the cluster requires a special exception to be in the Rural (R) Zone.

AND:

That the proposed use is a reasonable one because it would increase the housing stock in Newport in two residential zones. It was seconded by Mr. Nelson. The Chair then called for a vote. ***The motion passed 3-0-0.***

Chairman Saccento called for a motion to memorialize the decision of the ZBA to grant the variance. She asked for conditions. Mr. Nelson stated he would like the Highway Department and Police Department to sign off on it.

Mr. Kessler made a motion to ***grant the Variance for Case #1085 conditional on:***

- 1. Review of traffic on Parkview Street and Maple Avenue by the Highway Department and Police Department and***
- 2. Review of the conditions that lead to traffic being diverted to Parkview Street on a consistent basis.***

It was seconded by Chairman Saccento. Chairman Saccento called for a vote. ***The motion passed 3-0-0.***

Case #1086: 169 Sunapee Street, LLC ;Ronald K. DeCola (Owner) request a Special Exception for Mixed Use as provided for in Article IV, Section 402 of the Zoning Ordinance to permit a Cluster Development in the Rural (R) Zoning District. The property is identified as Map 112 Lot 045 and is located on Parkview Street in the Rural (R) and Single-Family Residential (R-1) Zoning Districts.

Chairman Saccento opened the public hearing. For clarification, she asked Mr. DeCola to explain why it was mixed use. He complied with her request.

Mr. DeCola again introduced himself and stated he would like to build a cluster development in a combined R and R-1 Zone. He then read aloud his application to the Board members. He discussed parking, Town water and sewer as well as road conditions.

Chairman Saccento asked about the topography of the area. Mr. DeCola explained the drop-off at the northwest side of the lot.

Chairman Saccento asked if there were questions from the public. There were none.

Chairman addressed the Board and asked if they had any questions.

Mr. Kessler addressed Mr. DeCola and stated that he could have gone forward with a proposal of a development of ten single family houses and he would not have needed to go before the ZBA. By clustering the units, he was preserving the habitat and the neighborhood. Mr. DeCola concurred.

The abutters present stated that the maps were not to scale. It was not a true indication of how much land would be used. The Zoning Board members stated that specifics would be shown and worked on at the Planning Board meeting. They then discussed the topography of the land and surface water with the abutters and the land's particulars.

The Chair asked if there was further information from the applicant. There was none.

Mr. Kessler made a motion that; ***the Board enter into deliberations for Case #1086.*** It was seconded by Mr. Nelson. ***The motion passed 3-0-0.***

Zoning Board of Adjustment Special Exceptions-Mixed Use

She then asked for a motion on Standard A.

Standard A

A motion was made by Mr. Kessler, seconded by Mr. Nelson; ***that the selected site is an appropriate location for the proposed use because it is residential housing.*** Standard A has been met. ***The motion passed 3-0-0.***

Mr. Nelson addressed the abutters in attendance. He stated that Mr. Kessler was correct in that Mr. DeCola could propose ten individual houses which would disturb a lot more land. Hopefully when the Highway and Police Departments sign off on the project things will be better. Mr. Nelson stated he shares the abutters concerns on traffic. The abutters thanked the ZBA members. They were told they would be noticed when Mr. DeCola goes before the Planning Board.

Standard B

A motion was made by Mr. Nelson, seconded by Chairman Saccento; ***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: the ZBA has asked the Highway and Police Departments to sign off on the traffic. 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 the contractor will tie into the Town water and sewer.*** There was a short discussion on Town sewer tie in. 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 will add new residential units to the neighborhood.*** Standard D has been met. ***The motion passed 3-0-0.***

Standard E.

Mr. Kessler made a motion that ***the proposed use is consistent with the spirit of the Ordinance and the intent of the Master Plan because it adds additional housing to the Town and is creative in the use of the land.*** Mr. Nelson seconded the motion. Standard E has been met. ***The motion passed 3-0-0.***

Chairman Saccento asked for a motion on a collective standard A, B, C, D and E for Case #1086. On a motion by Mr. Kessler, seconded by Mr. Nelson; ***the Board approved Case #1086 with the same conditions that the ZBA applied to Case #1085:***

- 1. Review of traffic on Parkview Street and Maple Avenue by the Highway Department and Police Department and***
- 2. Review of the conditions that lead to traffic being diverted to Parkview Street on a consistent basis.***
- 3. That the applicant connects to Town water and sewer instead of putting in their own septic systems and well.***

The motion passed 3-0-0.

Chairman Saccento stated the Notice of Decision for Cases #1085 and #1086 would be ready in five business days.

Case #1087: Summit Distributing, LLC (Owner) and Huseyin Sevincgil, P.E. (agent) request a Variance to the terms of Article II, Section 210.4 of the Zoning Ordinance to permit canopy replacement within the front setback. The property is identified as Map 114 Lot 027 and located at 14-16 John Stark Highway in the Heavy Commercial (B-2) Zoning District.

Chairman Saccento addressed the applicants and asked them to introduce themselves. Mr. Tom Frawley (owner) introduced himself and Huseyin Sevincgil, P.E. of Greenman-Pedersen; Project Manager for the case.

Chairman Saccento asked the applicants to present their case. Mr. Frawley addressed the Board and gave historical information on the site as well as the extensive work they would be doing to be in compliance with NHDES.

Mr. Frawley stated their proposal was:

- To turn the canopy sideways to have a single line of pumps (same setback).
- Create safe space between store and gas pumps.
- Create one store from existing building without vestibules
- Replace the underground storage tanks

There was a general discussion on the proposal by the ZBA members. Mr. Kessler asked why the applicants could not move the canopy and gas pumps away from the setback one foot. He was told in order to keep the safety space between the store and the pumps.

Chairman Saccento asked the applicants about flooding of the property and NHDES regulations. Mr. Frawley said they had found out the catch basins were full of sand due to the flooding. He then had Mr. Sevincgil give a more detailed explanation.

Mr. Sevincgil, P.E. first addressed the proposed canopy at the gas pumps. He explained its repositioning. He also stated for the ZBA's benefit that the lot location was in the floodplain. They have to mitigate anything they have removed from the site. He listed the items that had been done and explained the requirements from NHDOT in relation to the storage tanks.

There were no abutters present. The Newport Health Center administrator had contacted the Zoning Office, after discussion with Ms. Donovan, they had no concerns.

There being no further questions from the Board members, Chairman Saccento closed the meeting to the public. On a motion by Mr. Kessler, seconded by Chairman Saccento; ***the Board voted to go into Deliberations. The motion passed 3-0-0.***

Variance Statement of Reasons and Discussion

Chairman Saccento asked for motions on questions one through five.

On a motion by Mr. Kessler, seconded by Mr. Nelson; that:
Granting the variance would not be contrary to the public interest because: the new canopy will not be further into the setback than the old one. Chairman Saccento had asked for information concerning the canopy and setbacks. There was none in the files. Chairman Saccento called for a vote. ***The motion passed 3-0-0.***

On a motion by Mr. Kessler, seconded by Mr. Nelson; that:
The spirit of the ordinance would be observed because the non-conforming setback of the canopy would not block access to the site. Chairman Saccento called for a vote. ***The motion passed 3-0-0.***

On a motion by Mr. Nelson, seconded by Chairman Saccento; that:
Granting the variance would do substantial justice because it would make it safer for ingress and egress and parking. Chairman Saccento called for a vote. ***The motion passed 3-0-0.***

On a motion by Mr. Kessler, seconded by Chairman Saccento; that:
The values of the surrounding properties would not be diminished because the new canopy's use will be the same. 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:

On a motion by Mr. Kessler, seconded by;
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 the non-conforming setback does not interfere with access or use of the property

AND:

That the proposed use is a reasonable one because it's location allows for safer access to the lot.

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

Chairman Saccento called for a motion to memorialize the decision of the ZBA to grant the variance. On a motion by Mr. Nelson, seconded by Mr. Kessler; ***the Board voted to grant a Variance for Case #1087 as presented.*** Chairman Saccento called for a vote. ***The motion passed 3-0-0.***

Chairman Saccento congratulated Mr. Frawley and Mr. Sevincgil and stated their Notice of Decision would be ready in five business days.

On a motion by Mr. Nelson, seconded by Mr. Kessler; ***the Board voted to adjourn at 8:27 p.m. The motion passed 3-0-0.***

Respectfully submitted,

Maura Stetson
Scribe

Approved March XX, 2020

DRAFT