

**Zoning Board of Adjustment
March 18, 2021 6:30 PM
Board of Selectmen's Room/Municipal Building
15 Sunapee Street/Newport, NH**

Remote Access:

Zoom.com - Meeting ID: 876 3450 7050 **Password:** 418786
+1 (929)-205-6099 US (audio only, long-distance fees may apply)

PRESENT BOS ROOM: Jeffrey Kessler, BOS Representative; Tim Beard, Scott McCoy, alternate

PRESENT via ZOOM: no one

PRESENT via PHONE: no one

ABSENT MEMBERS: Ben Nelson, Acting Chairman

VIDEOGRAPHER: John Lunn, NCTV

STAFF PRESENT: Christina Donovan, Zoning Administrator

ABUTTERS PRESENT: Caleb Goodwin, Heidi Goodwin

Due to the absence of Acting Chairman Nelson, Mr. Kessler stepped in as Acting Chairman for the March 18, 2021 meeting.

CALL TO ORDER: Acting Chairman Kessler called the meeting of the ZBA to order at 6:32 p.m. and conducted a roll call (Mr. McCoy was appointed to sit for Mr. Nelson).

ADMINISTRATION: error in agenda; the ZBA did not have a July 6, 2020 meeting.

ADGENDA REVIEW: Acting Chairman Kessler requested that the Board move the minutes to after the cases were heard. ZBA members concurred with the action.

NEW BUSINESS:

Case #1101 Pinnacle Sports, John Hooper (Owner): requests a Variance from the terms of Article II Section 209.3 of the Zoning Ordinance to permit a noncompliance in front setback. The property is identified as Map 107 Lot 032 and is located at 22 Coitview Drive in the Light Commercial (B1) Zoning District.

Acting Chairman Kessler opened the public hearing and asked the applicant to present his case.

Mr. John Hooper addressed the Board and explained the reason for his request of a variance. His store, Pinnacle Sports is officially located on Coitview Drive although the storefront faces Sunapee Street (a state highway). The setback on Coitview Drive is 25 feet (instead of 15 as on Sunapee Street). They are proposing construction to build out 15 feet. He stated that many of the other structures on the road (Coitview) are as close to the road or closer. His proposed construction:

- 1) Will not make additional impervious surface (construction area will replace asphalt).
- 2) Makes the store look similar to the ones on abutting properties.
- 3) No additional parking will be required
- 4) No additional traffic will be created by the addition.
- 5) All department heads have been to the site and have had no concerns

Mr. Hooper stated they were trying to “fast track” the project. He therefore went to the Planning Board first (from the March 9, 2021 PB meeting: Mr. Merrow made a motion to *accept Case 2021-SPFP-002 with the condition it gets the variance approval from the Zoning Board of Adjustment (ZBA)*. It was seconded by Mr. Tellor. *The motion passed 4-0-0.*)

Mr. Hooper read aloud his application into the record.

Mr. McCoy asked how far into the setback the addition would be built. He was told 15 feet.

Acting Chairman Kessler stated the construction will be over part of the employee parking lot. Where would they park? He was told there would still be sufficient parking spaces for the employees and clients in the existing parking areas.

When asked about increased traffic to his store, the applicant told the Board that he believed there would be enough (parking) spaces. There was also going to be a dedicated area for offloading shipments for the store off of Coitview Drive.

Mrs. Maura Stetson asked of the addition would be all storage, or would it also have retail. Mr. Hooper informed the Board that the addition would be half storage, half retail area. He explained (with the high ceilings) the retail area in the addition would be for his stock consisting of fly fishing rods(8+ feet) and firearms.

There being no questions from the Board members, on a motion by Mr. McCoy, seconded by Mr. Beard; *the Board voted to go into Deliberations. The motion passed 3-0-0.*

Variance Statement of Reasons and Discussion

Acting Chairman Kessler asked for motions on prongs one through five.

1. On a motion by Mr. Beard, seconded by Mr. McCoy; that:
Granting the variance would not be contrary to the public interest because it would keep a business in Newport that was definitely needed; it would add to the values of the properties in the area. There was no discussion by the Board. Acting Chairman Kessler called for a vote. *The motion passed 3-0-0.*

2. On a motion by Mr. McCoy, seconded by Mr. Beard; that: *The spirit of the ordinance would be observed because there will be no impact to the traffic and will meet the usage of the surrounding properties.* Acting Chairman Kessler called for a vote. *The motion passed 3-0-0.*

3. On a motion by Acting Chairman Kessler, seconded by Mr. McCoy; that:
Granting the variance would do substantial justice because it allows the business to expand on their property and is keeping with the nature of the neighborhood. Acting Chairman Kessler called for a vote. *The motion passed 3-0-0.*

4. On a motion by Acting Chairman Kessler, seconded by Mr. McCoy; that:
The values of the surrounding properties would not be diminished because the expansion would be a similar style to the existing properties on the road. Acting Chairman Kessler called for a vote. *The motion passed 3-0-0.*

Unnecessary hardship

Acting Chairman Kessler made a motion:

5. 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 the property setback will be similar to other properties in the area. Mr. Beard agreed with the motion. Mr. McCoy seconded the motion.

AND:

A.ii. That the proposed use is a reasonable one because it allows expansion of a business in its current location.

A point of order was made. The applicant had answered 5B. The Board was answering 5A. An explanation was given; the Board continued with its motion. Mr. Beard made a motion to accept Aii. It was seconded by Mr. McCoy. There was no discussion. Acting Chairman Kessler called for a vote. ***The motion passed 3-0-0.***

Acting Chairman Kessler called for a motion to memorialize the decision of the ZBA to grant the variance. On a motion by Mr. McCoy, seconded by Mr. Beard; ***the Board voted to grant a Variance for Case #1101 from the terms of Article III Section 307 of the zoning ordinance for the construction of the building addition at 22 Coitview Drive.*** There was a short discussion by Mr. McCoy and the Board. Acting Chairman Kessler called for a vote. ***The motion passed 3-0-0.***

Acting Chairman Kessler Nelson congratulated the applicant.

Case #1102 Zahari Realty, LLC: request a Variance from the terms of Article II Section 211.2 of the Zoning Ordinance for multi-unit residential housing. The property is identified as Map 114 Lot 011 and is located at 20 South Main Street in the Industrial (I) Zone.

Acting Chairman Kessler opened the public hearing and asked who was presenting the case. Mr. George Delegas addressed the Chairman via zoom and introduced himself. He stated the applicant is proposing eleven apartments in the existing second floor of the Dunkin Donuts building. The original variance for the renovation project (Arlington Sample) was in 2012; this apartment project variance was originally granted in 2017.

(From the minutes of March 23, 2017:

Case #1046: Zahari Realty, LLC (Owners) and James Clifford (Agent) request a Variance to the terms of Article II, Section 211.2 of the Zoning Ordinance to permit the construction of twelve apartment units on the second floor of an existing building. The property is identified as Map 114 Lot 011 and located at 20 South Main Street in the Industrial (I) Zoning District.

Chairman Nelson called for a motion to memorialize the decision of the ZBA to grant the variance. On a motion by Mr. Kessler, seconded by Mr. Lain; ***the Board voted to grant a Variance for Case #1046.***

Chairman Nelson asked for discussion. He then called for a vote. ***The motion passed 5-0-0.)***

Mr. Delegas stated the company originally tried to rent the rooms as office space; but they were unable to get tenants. In 2015 the variance was for 12 apartments. Since then the company has created one more two bedroom apartment. Continuing, Mr. Delegas stated that the 2017 variance has expired (the company had had more interest in leasing office space).

- The number of parking spaces on the lot is the same. The number required are 78; the number the applicant has are 83 parking spaces.
- There are both stairs and an elevator to the second floor.
- There are dumpsters for potential tenants use; the building is ready to be occupied.
- They believe interior construction will begin in the summer and will require nine months.

Mr. Delegas said he would answer questions from the Board.

Acting Chairman Kessler addressed Ms. Donovan and stated he did not have page two of Case 1102's application. The other Board members stated they had not been given it either. The meeting recessed while Ms. Donovan double checked the Zoning Office file for Case 1102 (page two was missing from the original application in the case file).

The ZBA exited the recess. Acting Chairman Kessler addressed Mr. Delegas and asked if he had his application. Acting Chairman Kessler asked him to read aloud the five facts supporting the request from his 2021 application into the record (pages one and two). Mr. Delegas complied.

Acting Chairman Kessler addressed the Board and asked if they had questions.

Mr. McCoy asked, for clarification, if the applicant was granted a variance for twelve apartments in 2017. He was told yes.

Mr. McCoy asked if the proposed project was a complete redesign. He asked about the differences between the variance in 2017 and requested variance in 2021. He was told the applicant now proposed four bedroom units (instead of three). Acting Chairman Kessler addressed Mr. McCoy and explained that under state law if a variance is not acted upon in two years the applicant has to reapply.

Mr. McCoy asked if they were going to be market rate apartments. The applicant stated he believed so.

Acting Chairman Kessler opened the hearing to the public.

Mr. Caleb Goodwin, abutter, stated his concerns:

- ❖ Traffic. Is already bad with the Dunkin Donuts. What will the impact to the current population be? Will the additional apartments increase the noise and traffic; make both vehicle and pedestrian travel more dangerous. Acting Chairman Kessler asked which side he was on. Mr. Goodwin said Laurel Street.
- ❖ Type of apartments and impact. Market rate or low income. There were several low income apartments in the area. His home was surrounded by Section 8 housing. He was concerned about what would happen with the proposed apartments. The plans for the proposed apartments show them to be very tiny. Acting Chairman Kessler addressed the abutters and stated the type of housing was not in the ZBA purview. They could not decide their case on the type of housing.
- ❖ How the apartments would impact the Town.
- ❖ Has there been a traffic study/safety assessment on what the apartments will do to the foot traffic.

Acting Chairman Kessler addressed Mr. Delegas and asked how the applicant will control noise and other intrusions. He had not informed the Board of a management company for the apartments. Mr. Delegas said the applicant had contacted a management company that was interested in working with them.

Mr. Delegas said they could not discriminate as to tenants. He listed some of the amenities in the building, stating they were not looking for low income tenants. They could not discriminate, but they would be selective. As for traffic, he stated that the peak hours would be from 6 am to 10 am. He understood the neighbors' concerns.

Ms. Donovan addressed the Board and stated that she, Building Inspector Chase and the Fire Chief Yannuzzi had been given a tour of the building. Ms. Donovan stated it was very silent in the building. Fire Chief Yannuzzi inspected for emergency vehicles ingress and egress as well as power to the building. Acting Chairman Kessler asked if Case 1102 would be going to the Planning Board. Ms. Donovan stated yes.

Acting Chairman Kessler addressed the abutters and stated that they should go to the Planning Board to express their concerns; he listed items that were under the Planning Board's purview. The ZBA could not take their concerns into consideration for the variance; the Planning Board could in their deliberations.

Mrs. Heidi Goodwin addressed Acting Chairman Kessler and asked if they were going to do anything to the landscaping (the grass) abutting her house and whether there would be dogs (allowed) in the apartments. If so; the Goodwins would have to put up additional privacy fencing. She explained past experiences with animals on the property.

Acting Chairman Kessler addressed Mr. Delegas and asked if the applicant was going to allow pets in the apartments. Mr. Delegas did not know. Continuing, Acting Chairman Kessler addressed Mr. and Mrs. Goodwin and explained the applicant was before the ZBA for a variance because they are located in an Industrial Zone (the abutters remembered Arlington Sample). Acting Chairman Kessler stated concerns they could bring before the Planning Board. Mrs. Goodwin thanked him for his explanation.

There was a general discussion on the case and necessary housing in Newport.

There being no questions from the Board members, Acting Chairman Kessler closed the meeting to Deliberations.

Variance Statement of Reasons and Discussion

Acting Chairman Kessler asked for motions on prongs one through five.

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

Granting the variance would not be contrary to the public interest because surrounding properties are retail with apartments over them. There was a short discussion by the Board. Acting Chairman Kessler called for a vote. ***The motion passed 3-0-0.***

On a motion by Mr. McCoy, seconded by Mr. Beard; that: ***The spirit of the ordinance would be observed because it is consistent with other properties on Main Street.*** Acting Chairman Kessler called for a vote. ***The motion passed 3-0-0.***

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

Granting the variance would do substantial justice because it will give us more rental units available. Acting Chairman Kessler called for a vote. ***The motion passed 3-0-0.***

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

The values of the surrounding properties would not be diminished because it will be a similar use to other properties and there will be new apartments. Acting Chairman Kessler called for a vote. ***The motion passed 3-0-0.***

Unnecessary hardship

Acting Kessler 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:

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 is currently zoned Industrial and this will allow similar use as other properties. It was seconded by Mr. Beard. There was no discussion. Acting Chairman Kessler called for a vote. ***The motion passed 3-0-0.***

AND:

That the proposed use is a reasonable one because it is similar to other properties in the neighborhood. It was seconded by Mr. Beard. There was no discussion. Acting Chairman Kessler called for a vote. ***The motion passed 3-0-0.***

Acting Chairman Kessler called for a motion to memorialize the decision of the ZBA to grant the variance. On a motion by Acting Chairman Kessler made a motion that: ***the Board grant a Variance for Case #1102 Zahari Realty, LLC; from the terms of Article II Section 211.2 of the Zoning Ordinance for multi-unit residential housing.*** It was seconded by Mr. Beard. In discussion, it was stated that all concerns brought up would be for the Planning Board. Acting Chairman Kessler called for a vote. ***The motion passed 3-0-0.***

Acting Chairman Kessler congratulated the applicant.

Acting Chairman Kessler addressed the abutters and stated Ms. Donovan would get the date and time for the Planning Board meeting when the Case will be heard.

Mr. Caleb Goodwin addressed Ms. Donovan and stated there was a discrepancy with Case 1102. There were two different applications. He showed copies; one was from a Mr. Clifford (2017). He claimed the ZBA voted on the wrong application. Ms. Donovan stated she would look into the discrepancies.

Ms. Donovan and the Board members had a lengthy discussion on the applicant's discrepancies on his paperwork as well as the paperwork given to the Board members. Acting Chairman Kessler stated it was now an Administrative responsibility. Ms. Donovan agreed.

Acting Chairman Kessler thanked Mr. and Mrs. Goodwin for attending the meeting.

MINUTES: May 28, 2020; ~~July 6, 2020~~; July 16, 2020; July 23, 2020; August 6, 2020; August 13, 2020; August 20, 2020; September 17, 2020; January 21, 2021

May 28, 2020

On a motion by Mr. McCoy, seconded by Mr. Beard; ***the Board approved the minutes of the May 28, 2020 meeting as presented.*** There was a discussion on the minutes. ***The motion passed 3-0-0.***

July 16, 2020

On a motion by Acting Chairman Kessler, seconded by Mr. Beard; ***the Board tabled the minutes of the July 16, 2020 meeting.*** ***The motion passed 3-0-0.***

July 23, 2020

On a motion by Mr. McCoy, seconded by Mr. Beard; ***the Board tabled the minutes of the July 23, 2020 meeting.*** ***The motion passed 3-0-0***

August 6, 2020

On a motion by Mr. McCoy, seconded by Mr. Beard; ***the Board approved the minutes of the August 6, 2020 meeting as presented.*** ***The motion passed 3-0-0.***

August 13, 2020

On a motion by Mr. Beard, seconded by Mr. McCoy; ***the Board approved the minutes of the August 13, 2020 meeting as presented.*** ***The motion passed by roll call vote 3-0-0.***

August 20, 2020

On a motion by Mr. McCoy, seconded by Mr. Beard; ***the Board tabled the minutes of the August 20, 2020 meeting.*** In discussion, the Board concurred they were missing page two. ***The motion passed 3-0-0.***

September 17, 2020

On a motion by Mr. Beard, seconded by Mr. McCoy; *the Board approved the minutes of the September 17, 2020 meeting as presented. The motion passed by roll call vote 3-0-0.*

January 21, 2021

On a motion by Mr. Beard, seconded by Mr. McCoy; *the Board approved the minutes of the September 17, 2020 meeting as presented. The motion passed 3-0-0.*

There being no further business, on a motion by Mr. Beard, seconded by Mr. McCoy; *the Board voted to adjourn at 7:58 p.m. The motion passed 3-0-0.*

Respectfully submitted,

Maura Stetson
Scribe

Approved: April XX, 2021