

**Town of Newport
Zoning Board of Adjustment
October 21, 2021 6:30 PM
Board of Selectmen's Room/Municipal Building
15 Sunapee Street/Newport, NH**

PRESENT BOS ROOM: Tim Beard, Chris Whalen, Barry Connell, BOS Representative Alternate; Bert Spaulding, Sr.

ABSENT MEMBERS: Scott McCoy, alternate; Ben Nelson, Acting Chairman; Jeffrey Kessler, BOS Representative

VIDEOGRAPHER: John Lunn, NCTV

STAFF PRESENT: Christina Donovan, Zoning Administrator

COMMUNITY MEMBERS PRESENT: Madison Doherty, Zoe Doherty, Isabella Fisher, Herbert Fisher, Sarah Fisher

CALL TO ORDER: Acting Chairman Connell called the meeting to order at 6:32 p.m. followed by a roll call of members present.

ADMINISTRATION: Ask for a special meeting in two weeks. Reeds Mill Road Variance

Mr. Spaulding, Sr. made a motion *that the Board hear the ZBA cases out of order (hear Case #1106 first)*. It was seconded by Mr. Whalen. Acting Chairman Connell called for a vote. *The motion passed 4-0-0.*

Mr. Spaulding, Sr. made a motion *to add a discussion on the Simplex opinion before the ZBA heard Case #1119 or Case #1120*. Acting Chairman Connell called for a vote. Mr. Whalen spoke against the motion. He said if the two applicants were present for their case, he wanted to proceed with them. He wanted to take care of the issues at hand first. After a brief discussion, the motion was withdrawn.

CONTINUED BUSINESS:

Case #1106: Debra Doherty (Owner) Tiffany Doherty (Agent): Request a Special Exception as provided for in Article II, Section 206.2 to permit a Farm Produce Stand. The property is identified as Map 242 Lot 056 and located at 2 Moore Road located in the Rural (R) Zoning District.

Acting Chairman Connell opened Case #1106. Ms. Donovan read aloud her Administrative Review. Acting Chairman Connell asked if anyone from the public would like to speak to the Case. Ms. Donovan stated there were no abutters present at the meeting. She had received a phone call from one abutter in favor of the farm stand. The Board had received two letters, one abutter in favor of the Board approving the Special Exception and one with concerns. Acting Chairman Connell read aloud the two letters into the record.

Acting Chairman Connell addressed Ms. Doherty and asked her to explain what she would like to do. Ms. Doherty briefly explained that she wanted to sell her produce at a roadside stand on her property. The stand would not be a permanent structure. It would be a cart that they would bring out only when they manned it. There was room for six cars to park in her driveway. She also had a lot of road frontage where people could park. Acting Chairman Connell asked if it was fresh produce from her farm. He was told yes. Mr. Spaulding, Sr. asked if she purchased produce and sold it at her farm. He was told no.

Mr. Whalen asked how large the farm stand was. He was told they had not made it as of yet. It would be a two wheeled cart. Right now there was nothing (growing season has finished); it would open in spring of 2022.

Other questions were:

Will you take the cart in at night? Yes. Mr. Spaulding, Sr. asked that it be a condition of the approval. He also asked that a stipulation be that nothing sold is to be purchased from a vendor.

Acting Chairman Connell addressed the applicant and asked Ms. Doherty to read aloud the answers on her application after he read the questions. Ms. Doherty read aloud the answers to the Special Exception questions into the record.

Mr. Whalen asked if an additional condition could be the stipulation that people park only on her property in order to address her abutters concerns.

There were no further questions from the Board. Acting Chairman Connell closed the hearing to the public. After a brief discussion on the conditions they would include in the motion memorializing the case, Acting Chairman Connell moved on to voting on the Standards.

Zoning Board of Adjustment Special Exception

Acting Chairman Connell read the three Standards and called for a vote on each.

Standard A

Acting Chairman Connell read: ***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.*** Acting Chairman Connell called for a vote. ***The motion passed 4-0-0.***

Standard B

Acting Chairman Connell read: ***The proposed use will not be injurious, noxious or offensive or in any way detrimental to the neighborhood. Standard B has been met.*** Acting Chairman Connell called for a vote. ***The motion passed 4-0-0.***

Standard C

Acting Chairman Connell read: ***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. Standard C has been met subject to the three conditions.*** Acting Chairman Connell called for a vote. ***The motion passed 4-0-0.***

Acting Chairman Connell asked for a motion on a collective Standard A, B and C for Case #1106. On a motion by Mr. Spaulding, Sr., seconded by Mr. Whalen; ***the Board approved the Special Exception for Case #1106 with the following conditions:***

- 1. Signage directing customers to farm stand parking***
- 2. No produce will be supplied from an external source***
- 3. Removal of sale cart at end of day***

Acting Chairman Connell called for a vote. ***The motion passed 4-0-0.***

Acting Chairman Connell congratulated the applicant. The applicant and Board members discussed signage for the farm stand.

The Board members discussed the Simplex Technologies, Inc. v. Town of Newington court case and how its decision affects all local Zoning Board of Adjustments on how they hear and grant or deny variances.

There were new questions to ask applicants applying for a variance. Ms. Donovan was directed by the ZBA to:

- 1) Find the Chain of Information dissemination (with NH) concerning new court cases that will potentially affect the way local ZBAs hear cases.
- 2) Get documentation of NH Municipal Association's (NHMA) responsibilities to the local ZBAs
- 3) Get the new questions.

Acting Chairman Connell addressed Mr. Spaulding, Sr. and stated he did not believe Newport should use the (new) three questions at the meeting. Mr. Beard agreed, stating that if the Board completed Case #1119; no one was present for Case #1120 at the October 21, 2021 meeting.

Mr. Spaulding, Sr. read aloud from the Simplex Technology opinion that was available to the Board members. He said there was a variance case scheduled for the meeting. Mr. Spaulding, Sr. made a motion *that if a variance case came before the Newport ZBA (October 21, 2021) that they use the new standard (the three questions in the synopsis)*. Mr. Whalen seconded the motion. *The motion passed 4-0-0.*

NEW BUSINESS:

Case #1119: Wisdom in New Dimensions, Dana Olmsted (Agent): Request a Special Exception as provided for in Article III, Section 306.1 to permit a Recreational Facility. The property is identified as Map 253 Lot 001, 011 and 006, located on Pike Hill Road located in the Rural (R) Zoning District.

Acting Chairman Connell opened Case #1119. He asked Ms. Donovan for her Administrative Review. Ms. Donovan stated she had no issues with the applicant's request as long as all Zoning Ordinances are met and all Planning and Zoning stipulations are put into place.

Acting Chairman Connell addressed Ms. Olmsted and asked her to explain what she would like to do. Ms. Olmsted said that her intention was to create an eco-friendly retreat on Pike Hill on the parcels that she owns. There will be events held on her site. One is the annual International Celebration of Dance. She will also hold workshops and seminars; have a natural food café and organic farming. She suggested that the Board visit her website: www.danarondel.com. They wanted to ensure that Wisdom in New Dimensions (WIND) falls into the category they have been listed as and they are meeting the guidelines for Recreational Facility.

Acting Chairman Connell asked Ms. Olmsted how many (combined) acres the lots had. He was told over 100 acres.

When asked if she would be putting up buildings, she stated there would be structures on the property that will be built: a pavilion, campsite with geodesic domes built on decks (with dirt foundation).

Acting Chairman Connell asked how many people she was planning on having at the events. He was told for the annual International Celebration of Dance she was planning on not more than 300 people on the site in the pavilion.

Mr. Spaulding, Sr. addressed the applicant and stated that the lack of plans provided to the Board members made it difficult to make a decision. What had been provided is insufficient because what is being talked about is a large entity. 300 people could be 150 cars.

Where is the parking lot going to be? There are concerns with runoff (road).

Ensuring Ms. Olmsted understood she was on a Class VI Road, Mr. Spaulding, Sr. asked what her plans were. Ms. Donovan stated the applicant went before the Planning Board and got approval if she brought the road up to the standards they listed. When asked if she could list all the conditions put on WIND by the Planning Board, Ms. Donovan said they were in the minutes. Mr. Fisher and recording secretary Mrs. Stetson both stated that the Board did not make a determination on the WIND case.

Mr. Beard and abutter Mr. Fisher briefly discussed the Class VI road.

Mr. Spaulding, Sr. stated the ZBA needed to know the Planning Board's decision, because the lots being used run through an active construction site. Mr. Whalen stated that the road was only part of it. Ms. Olmsted had to get building permits; sewage and drainage are needed also. Mr. Spaulding, Sr. addressed Ms. Donovan and stated he needed to know what the Planning Board decided. He asked her to tell him. Ms. Donovan stated: it was to be brought up to the grade in relation to the traffic that would use it under the subdivision regulations to make it a Class V Road. He asked if there were any other conditions. She stated no.

Addressing Ms. Olmsted, he asked if she believed there would be any problems for her guests traveling the road safely through the construction site and Class VI Road. She said no. It was one reason she chose the (Pike Hill) location.

Mr. Spaulding, Sr. stated he was bothered by:

- ❖ The access through the Carroll Concrete site
- ❖ The road standard
- ❖ Access for emergency vehicles (Planning Board purview)
- ❖ 306.1 of the Zoning Ordinance (each type of use/structure is subject to review-she has listed three). The information given needs much more detail than what is provided to the ZBA
- ❖ 306.2 of the Zoning Ordinance stated the detail that was necessary to come before the ZBA to show whether the proposed Special Exception is in harmony with the intent of the Ordinance.

Mr. Spaulding, Sr. said he couldn't go forward with the Case and vote without seeing some detailed planning.

Acting Chairman Connell asked if there were any abutters present that would like to speak. Mr. Herbert Fisher, 270 Pike Hill Road stated he lived to the east of Ms. Olmsted's acreage. Mr. Fisher spoke about the Class VI road. He said it has been his nemesis for fifteen years since they purchased their property. When they bought the land they figured they would grade the road and everything would be great. In reality he spends six to eight months annually dealing with liquefied clay. One season he worked for Mr. Wayne Weed and he was allowed to put as much gravel on the road as he could. Mr. Fisher trucked in hundreds of thousands of tons of gravel. One winter later after a road logger abused the road all the work was undone. Mr. Fisher stated he is continuously pulling out vehicles that get stuck. The Town closes the road until June every year because of its condition.

Mr. Fisher stated if it was a homeowner, he would work with them on the road. Mr. Carroll, Jr. had assisted some as a neighbor. Mr. Carroll, Jr. contacted Mr. Fisher before the meeting. He asked Mr. Fisher to relay to the ZBA that he was not going to be able to assist any further on the (Pike Hill) road. Mr. Fisher added to Mr. Spaulding Sr.'s statement about driving through an active quarry site. When his family drives through, they have to yield to quarry trucks, loaders, haul trucks and equipment that do not have the visibility to see vehicles on the road. Locals know to stop, the dangerous situation will not be aware to someone coming from the city. Concluding, Mr. Fisher stated:

- a. He fears the large number of vehicles (150) going up to the property; what happens when they get stuck or degrade the road
- b. What if someone needs emergency vehicles on the site?
- c. It will be a huge undertaking to upgrade the road.

Mr. Whalen questioned if he was talking about upgrading from a Class V to Class VI road. Mr. Fisher said yes.

Acting Chairman Connell asked Ms. Olmsted if she was aware of the cost and work involved with the road. Ms. Olmsted said the road had been discussed at the Planning Board. She was aware of some of the work that will need to be done in order to get the road in a condition where they can drive on it. She is still working out the site plan to ensure that it will meet the guidelines and that she will be able to

maintain and manage the eco-retreat as it should be. Acting Chairman Connell asked Ms. Olmsted if she was the only person that will be undertaking it. She said no.

Ms. Olmsted said that they would ensure that there are no problems and the roads are passable. She stated there will not be guests in the winter season. They will close at the end of October. Mr. Whalen asked when she would open the eco-retreat to guests. Ms. Olmsted said March. Mr. Whalen asked if she has been on Pike Hill in the spring. She stated yes; in the spring and winter. Mr. Whalen said that in NH when they say Mud Season, they aren't kidding (unpassable roads). Mr. Whalen agreed with Mr. Fisher; the Planning Board is asking to have the road brought up to Class V standards. He didn't know what it entails; but it sounds as though if that isn't done, what you want to do in March is not going to happen.

Mr. Beard asked Ms. Donovan if Pike Hill was a Class V road. She stated it was Class V up to before Carroll Concrete. Mr. Beard said the Town doesn't maintain the road.

Ms. Olmsted said they would open in March and close in October. Because they were opening in March doesn't mean there will be guests onsite. She explained that they will prepare for guests. Guests will start arriving around the month of May. Ms. Olmsted explained her tentative plans:

- ❖ There will not be a lot of cars on the road. She has spoken to places in the area to partner with them for parking (for the big event).
- ❖ They will have shuttles to their sites
- ❖ For personnel and guests for smaller events there will be a parking lot. She plans to speak with neighbors (Carroll) to find out if WIND could utilize parking at their properties.
- ❖ The Annual International Celebration of Dance is an evening event. They would not have to be concerned with an active construction site
- ❖ They are finalizing the site plans to ensure there will be no problems.

Acting Chairman Connell addressed Ms. Olmsted and stated she kept on using the word passable with the road. She has to bring it up to a Class V road standard. Ms. Olmsted said they would ensure the road was brought up to a Class V standard.

Acting Chairman Connell addressed Mr. Fisher and asked if someone brought the road up to a Class V standard, how it would affect him. Mr. Fisher said that if the road was brought up to a Class V standard he would be overjoyed. Judging from the documents (he had been given) he didn't believe she fully understood what is involved and how it is validated by the Town.

Mr. Spaulding, Sr. asked if the applicant had the information. Ms. Donovan stated she had been given it; it was discussed at the Planning Board meeting. Mr. Spaulding, Sr. asked Ms. Olmsted if she was aware it would cost one million dollars to upgrade the road from Class VI to Class V and create enough area to park 200 cars. Ms. Olmsted said that based on her research she was confident it would not cost that much.

Acting Chairman Connell addressed the applicant and asked her to read aloud the answers on her application after he read the questions. Ms. Olmsted read aloud the answers to the Special Exception questions into the record.

Ms. Donovan addressed Chairman Connell and stated Ms. Olmsted had been given the Town waiver of liability at the Planning Board meeting.

Mr. Whalen stated the applicant had not answered information for Standard C. He believed the Board had to table the Case; he could not vote on it.

Ms. Olmsted stated that she will partner with the Opera House; they have seating for more than 300 people. When asked if she was brainstorming, she stated it was her intention to ask the Opera House. Mr. Whalen told her the ZBA needed to see it as concrete. He asked if she had a statement saying she will be partnering with them, or is it something she is planning on proposing to them. Ms. Olmsted said she intended to partner with them. She will meet with the Opera House to let them know of her intentions.

Mr. Spaulding, Sr. addressed Ms. Olmsted and said she needed to understand the difference in road standards. He explained there was a subdivision standard and there was a road standard. He explained in detail what it meant to bring the Class VI road up to a Class V road standard. (Ms. Donovan addressed the Board and stated that she had misspoken. The Planning Board had not said to upgrade the road to Class V. It had discussed upgrading the road to the subdivision standards, standards dependent on the traffic count). Mr. Spaulding, Sr. stated that the upgrade needed to be permanent. Any approval the applicant got from the ZBA will have a condition that the road must withstand our (New England/Newport) weather. Continuing, Mr. Spaulding, Sr. told Ms. Olmsted that she will have to maintain the road. It is a huge undertaking. He then said her choices for septage were: separate systems for each dome or septic that is plumbed to a central location. He doesn't know how she will do it.

Mr. Spaulding, Sr. wished her luck, but made a motion that Case #1119 be tabled due to insufficient information. He stated Ms. Olmsted will need to come back with:
A site plan showing (see complete list in 306.2): parking, buildings, facility layout, road and a clear explanation to the ZBA of the site such as progressive additions (buildings).
Acting Chairman Connell explained to Ms. Olmsted the ZBA was giving her an outline of what they need from her so they can move forward.

Mr. Spaulding, Sr. addressed Ms. Olmsted and encouraged her to continue. The ZBA needs to work within certain parameters and she must pass the criteria in order for the ZBA to admit it.

On a motion by Mr. Spaulding, Sr., seconded by Mr. Whalen; ***the Board voted to table Case #1119 (due to Sections 306.1 and 306.2). The motion passed 4-0-0.***

In discussion, members stated the date and time of the next ZBA meeting was: November 18, 2021 at 6:30 p.m.

Acting Chairman Connell called for the full motion.

Mr. Spaulding, Sr. made a motion ***to continue Case #1119 Wisdom in New Dimensions (due to Sections 306.1 and 306.2) to the November 18, 2021 meeting at 6:30 p.m.*** It was seconded by Mr. Whalen. ***The motion passed 4-0-0.***

Mr. Spaulding, Sr. addressed Ms. Olmsted and told her if she needed more time, to contact Ms. Donovan and another continuation will be granted to her.

Case #1120: Rocco Ruggeri (Owner): Request a Variance as provided in Article III, Section 307.1 to permit the addition of a dwelling in a structure that has three existing dwellings. The property is identified as Map 109 Lot 003 and is located at 156 North Main Street in the Professional Business District (PBD) Zoning District.

The applicant was not in attendance. Ms. Donovan requested the Board continue Case #1120 to November 18, 2021 at 6:30 p.m.

On a motion by Mr. Beard, seconded by Mr. Whalen; ***the Board voted to continue Case #1120 Rocco Ruggeri to November 18, 2021 at 6:30 p.m. The motion passed 4-0-0.***

MINUTES: July 16, 23, 2020; August 20, 2020; September 16, 2021

Due to a lack of voting members for the minutes; on a motion by Mr. Spaulding, Sr., seconded by Mr. Beard; ***the Board voted to table the minutes to the November 18, 2021 ZBA meeting. The motion passed 4-0-0.***

A request was made to Acting Chairman Connell that the Planning Board minutes of October 5, 2021 and October 12, 2021 be made available to the ZBA members to read before they hear Case #1119 on November 18, 2021 to inform them of the discussion, questions and the Planning Board members concerns concerning the Class VI road at the property site: **Dana Olmsted(Owner): Class VI road review/recommendations/required documents** (there is no NCTV recording for October 5; a video is available for October 12, 2021). Ms. Donovan was directed to provide those minutes to the ZBA members before the November 18, 2021 meeting.

Mr. Spaulding, Sr. stated that before their next meeting the Board members needed answers to the Simplex case; namely who will be giving the local ZBA information in the future and what they are telling communities to do.

ADMINISTRATION: Ask for a special meeting in two weeks. Reeds Mill Road Variance

After a discussion on the request for a special meeting and the hardship the refusal will cause, ***the Board concurred to hold a special meeting to hear the Reeds Mill Road Variance Case on November 4, 2021 at 6:30 p.m.***

On a motion by Mr. Whalen, seconded by Mr. Beard; ***the Board voted to adjourn at 8:35 p.m. The motion passed 4-0-0.***

Respectfully submitted,

Maura Stetson, Scribe

Approved on: November XX, 2021