

**Zoning Board of Adjustment**  
**July 23, 2020 6:30 PM**  
**Board of Selectmen's Room/Municipal Building**  
**15 Sunapee Street/Newport, NH**

**Remote Access:**

**Zoom.com - Meeting ID:** 881 5819 4469    **Password:** 168622  
+1 (929)-205-6099 US (audio only, long-distance fees may apply)

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**PRESENT BOS ROOM:** Ben Nelson, Vice Chairman; Jeffrey Kessler, BOS Representative; Scott McCoy, Alternate

**PRESENT via ZOOM:** Melissa Saccento, Chairman

**PRESENT via PHONE:** no one

**ABSENT MEMBERS:** Tim Beard

**VIDEOGRAPHER:** John Lunn, NCTV

**STAFF PRESENT:** Christina Donovan, Zoning Administrator

**ABUTTERS PRESENT:** Karen Arleo, Randy Arleo, Lori Flewelling, Dale Flewelling, Scott Barrows, Eddie Cortez, Pam Venable

**COMMUNITY MEMBERS PRESENT:** Ed Karr, Shirlee Karr, Dave Lam, Arnie Demeis, Angie Stephens, Tom Gallagher, Gail Proper, Randy Proper

**Via ZOOM:** Brad Cossingham, Keith Thibeault, Ken Vigue, Amanda Merrigan, Chris Brooks, Tim Sampson (Avanru Development Group), Avery Franks (Avanru Development Group),

**CALL TO ORDER:** Chairman Saccento called the meeting of the ZBA to order at 6:36 p.m. Chairman Saccento introduced herself (Zoom) and did a roll call of ZBA members in attendance. She appointed Mr. Scott McCoy to sit for Mr. Timothy Beard.

Mr. Kessler addressed Chairman Saccento and stated they needed to appoint a Vice Chairman of the ZBA for 2020-2021. Mr. Kessler made a motion *to appoint Ben Nelson to the position of Vice Chairman*. It was seconded by Mr. McCoy. Chairman Saccento called for a roll call vote. *The motion passed 3-0-1 (Nelson abstained).*

**ADMINISTRATION:** none

Chairman Saccento addressed the applicants and public in attendance and explained the ZBA format which outlined the way Case #1090 would be heard.

**NEW BUSINESS:**

Case #1090: Avanru Development Group/ Jack Franks (owner): request a Special Exception as provided for in Article II, Section 210.2 of the Zoning Ordinance to permit Multi Unit Housing. The property is identified as Map 115 Lot 002 and located at Spring Street in the Heavy Commercial (B2) Zoning District.

Chairman Saccento opened Case #1090. Chairman Saccento appointed Vice Chairman Nelson, who was present in the BOS Room, as Acting Chairman to conduct the July 23, 2020 ZBA meeting.

Mr. Ed Karr, community member, stated he objected to the ZBA members present to sit on Case #1090. Three had sat on the case initially and they came into the meeting with a preconceived, biased opinion of the case. He asked them to recuse themselves. Chairman Saccento, Mr. Kessler and Acting Chairman Nelson explained to Mr. Karr that they were following the bylaws and Rules of Procedure of the ZBA. Case #1090 was being heard as a new case. Mr. Kessler stated decisions would be made on what was presented at the July 23, 2020 meeting.

Mr. Randy Arleo, abutter, asked why there needed to be a second meeting. He had not been notified. Mr. Kessler stopped Mr. Arleo. Mr. Kessler stated that in this time of Covid-19 the Town was making its best effort to notify all abutters. Acting Chairman Nelson stated the reason for the second meeting was because there was a question as to whether some people were notified. The Board was hearing it again out of an abundance of caution. Mr. Arleo stated his notice had been delivered by UPS. There was a discussion on the notification by the Town to the abutters.

Acting Chairman Nelson stated he would allow both noticed abutters and community members to speak. He stated the BOS room was too hot and small for the number of people in the room (to socially distance). Chairman Nelson requested that the noticed abutters stay and other citizens go to a designated room with a TV to listen to the meeting. When it was their turn to speak they would be called into the BOS room one at a time.

Acting Chairman Nelson reiterated the procedure for applicant, abutter and non-abutter participation.

Zoning Administrator Donovan escorted those who were not noticed abutters out of the room.

Acting Chairman Nelson addressed the applicant and asked him to present his case. Mr. Jack Franks, applicant, introduced himself and thanked everyone for coming to the Zoning Board meeting. He understood there were a lot of unanswered questions. He would do his best to present the development project to the Board and the public in attendance and answer as many questions as he could.

Mr. Jack Franks stated that his company was out of Walpole, NH. They were a commercial and residential development company that has built housing around the State of New Hampshire. He explained the importance of having quality housing for those in the workforce, the fact that NH has a less than 1% vacancy rate in their rental housing units. Businesses are having a hard time finding workers due to the need. The Avanru Development Company has been working closely with the state to build affordable housing statewide. The company chose Newport because they had had discussions on the state level. There is a need for affordable housing by Newport's employees and prospective employees working at local companies. Avanru wanted to bring new, updated housing stock to the area.

Mr. Franks explained his company uses new modular technology that they developed. Buildings are very energy efficient multi-unit modular homes. His company was proposing bringing quality and the "next generation" of homes to the community. He described the proposed apartment units and amenities; the professional onsite management company, Hodges Management out of Concord, NH; the security and surveillance system that will be in place. Mr. Franks stated he is excited with the prospect of bringing the rental housing to Newport because the rental market is tough. This will bring new housing stock to Newport.

Mr. Franks explained the development project to the Board and abutters in attendance. There would be a total of 42 units in the Heavy Commercial B2 Zoning District. He listed the amenities the housing would have on the inside and outside.

Mr. Franks explained he had met with the Planning and Zoning Department staff about the layout and location of the project. He discussed the layout and setbacks with its staff to ensure it was meeting all of Newport's Ordinances.

Mr. Franks stated the building had a modern look which was similar to the Health Center down the road. The building will be similar in size to the Health Center. Mr. Franks again stated there will be a total of 42 units; 24 one bedroom/one bathroom units and 18 two bedroom/ two bathroom units. There will be ample parking and greenspace and will have a small park for residents. There will be two entrances and one exit to the property.

Mr. Franks told the Board and abutters that the development is a permitted use through Special Exception. He stated that in the supporting documents the Board members and abutters had been provided, there was a list of uses that would be allowed on the property without notification to abutters, many which would be less preferable than a residential unit such as this one. Mr. Franks read aloud from the supporting document. The appraiser who had written it concluded the proposed building would create the least impact to the surrounding area. He encouraged abutters to contact the company or realtor with any questions.

He stated for the record that:

- 1) The proposed construction meets all the setbacks and requirements for the site.
- 2) There are over 84 parking spaces for the proposed residential unit.
- 3) It is a three story facility. Mr. Franks listed the indoor and outdoor amenities outlined for the residential unit.
- 4) It was all handicap (ADA) accessible
- 5) It will be state of the art technology
- 6) It will be well maintained and well (professionally) managed

Reiterating, Mr. Franks stated the proposed project met the Town of Newport setbacks and engineering was done by Duffield Engineering (Campton, NH). Currently there is a four acre parcel that will not be developed. Addressing Acting Chairman Nelson, Mr. Franks asked if he could read aloud his application for Case #1090 into the record. Acting Chair Nelson agreed to Mr. Frank's request (application is on file in the Zoning Office).

In conclusion, Mr. Franks reiterated that NH has a less than 1% vacancy rate in their rental housing units. Employers are having a hard time finding workers. Employees are having a difficult time finding housing in the area. The Avanru Development Company chose Newport because the Town had a need for quality affordable housing. Avanru wanted to bring new, state of the art housing to Newport. He welcomed the abutters and neighbors to Walpole to tour the buildings they have constructed there. There was initial resistance in Walpole; now those same people are in favor of the apartment units.

Acting Chairman Nelson opened questioning to the Zoning Board members.

Mr. Kessler stated it would be workforce housing. Mr. Franks said he was correct.

Mr. Kessler asked where the funding would come from; if it would be tax credits or federal guaranteed loans.

Mr. Franks stated it would be through the tax credit process through the NH Finance Housing Authority.

Mr. Kessler stated that Newport has had other individuals approach the town looking to build workforce housing. He asked about the tenant's annual median income (AMI); if Mr. Franks could explain what the potential tenants AMI might be and if it was checked on an annual basis. Mr. Franks stated it was checked on an annual basis. Mr. Franks said between \$14.00-\$24.00/hr.

Mr. Kessler asked who would manage the building. Mr. Franks stated they hired a professional onsite management company, Hodges Management out of Concord, NH. Continuing, Mr. Kessler asked, for clarification, if the Hodges Management company had to go through "bells and whistles" in order to manage Mr.

Frank's residential unit building; if their professional qualifications was part of his being able to get the grants and tax credits.

Mr. Franks agreed, stating the professional management company for his property needed to be completely certified by the State of New Hampshire (NH) and Housing and Urban Development (HUD) in order to manage the property. Mr. Franks stated he was not qualified due to the extensive credentials (in their field) necessary.

Mr. Kessler stated there was a time commitment to up keep the property. It had been 99 years. Mr. Franks stated Mr. Kessler was correct.

Mr. Franks explained the three types of housing on the market:

1. Section 8
2. Affordable Housing/Workforce Housing/ Senior Housing
3. Market Rate

He stated his proposed project would fall under Affordable Housing/Workforce Housing/Senior Housing.

Mr. Franks stated applicants needed to qualify to be able to rent in Workforce Housing. Potential tenants in the building would be earning 50% to 60% annual median income (AMI). He explained the strict requirements to ensure that a tenant's income falls within the stipulated AMI. The definition of qualifying workforce housing income (established by the State of New Hampshire) was an individual working fulltime at \$14.00-\$24.00/hr.

He asked the abutters to think of individuals they knew in this pay grade (manufacturing facilities, police, teachers, clerks and Town employees). They would be eligible to rent one of the apartments. Potential renters had to have a verified, stable income. The average rental savings for a person was \$300/mo. It is not a handout, it is a hand up. (He emphasized the Avanru Development Company did not receive payment from the government to cover this rent decrease).

Reiterating, Mr. Franks stated the professional management company for his property needed to be completely certified by the State of New Hampshire (NH) and Housing and Urban Development (HUD) in order to manage the property. Mr. Franks stated he was not qualified due to the extensive credentials (in their field) necessary.

Mr. Kessler stated there was always a concern about the number of school aged children that would move in. He stated the Board went through the same question with other applicants. He asked Mr. Franks what estimate he has about children moving into school systems from similar size developments. Using data from a Walpole project, Mr. Franks said five children had moved in; four of the children's families had moved into the new apartment building from an older one in the same town.

Mr. Franks emphasized that the number of individuals living in an apartment unit is strictly regulated.

Mr. Franks explained why he got into the residential rental business for workforce and seniors.

Mr. Kessler stated there were two entrances and one exit. He asked Mr. Franks to explain how traffic would flow; there could be up to eighty vehicles. How did he believe it would impact Spring Street?

Mr. Franks stated the line of sight was several hundred feet. He had spoken with Fire Chief Yannuzzi who suggested splitting the traffic two ways. He explained the traffic flow and also the snow load for the parking lot. The entrances/exits would be properly lit. When asked, Mr. Franks stated they were not planning on putting in sidewalks. There were no sidewalks in the area.

Mr. Kessler stated the land abutted the strip mall land (owned by the Lannon Company). He asked if something could be worked out with them (a pathway to the John Stark Highway). Mr. Franks stated he would have to discuss anything with the DES because of the wetlands.

Mr. Kessler stated that traffic and traffic flow would be discussed at the Planning Board meeting.

The benefits of the new residential housing to the Town of Newport were:

- 1) an \$8,000,000-\$9,000,000 investment in the community
- 2) an increase to the tax base
- 3) an increase of water and sewer users
- 4) affordable, state of the art housing for Newport residents

Ms. Saccento questioned information in the appraiser's report. She asked for clarification whether the proposed development qualified as workforce housing. Mr. Franks contended the point, stating that NH's Housing Finance Authority will conduct their own assessment. They have jurisdictional authority over whether it qualifies or not. Explaining further, Mr. Franks stated the appraiser's report was drawn up to show the Board and abutters what could be built there (without abutter notification). Detailed market studies will be drawn up and submitted by the State of New Hampshire to qualify the project before any "shovels are put in the ground".

Acting Chairman Nelson asked Mr. Franks if he would build the development if it doesn't qualify for workforce housing. Mr. Franks said that he would consider building a market rate unit although his intent is to build workforce housing.

Ms. Saccento again stated that the appraiser stated in the document that the project as presented may not qualify as workforce housing. Mr. Frank reiterated that his intent is to build workforce housing.

Ms. Saccento asked how the Board and abutters knew this would not become another type of housing (Section 8). Mr. Franks stated for the record the development would become workforce housing. Mr. Franks also stated that NH RSAs prohibit asking that question because it is discriminatory. Also for the record, Mr. Franks stated he was at the Zoning Board to request a Special Exception for Multi-Family Housing/Workforce Housing.

Acting Chairman Nelson addressed Ms. Saccento and read aloud the wording of the appraiser's document. He explained the grammatical use of "may" which could be confusing and was not an absolute.

Ms. Donovan read aloud from the application which stated building a dwelling for two or more families. Mr. Franks reiterated it was a request for a Special Exception as provided for in Article II, Section 210.2 of the Zoning Ordinance to permit Multi Unit (Family) Housing. He said a full explanation was in the application.

Mr. Franks stated that all applications were for workforce housing.

Mr. McCoy asked why 42 units? Mr. Franks stated that funding was annual and limited. NH Housing has a maximum amount. He would be trying to acquire \$800,000/year or \$8,000,000 over the course of the project. Forty two units cost approximately 8.4 million dollars. Between the funding and Mr. Frank's personal investment they would be able to cover the loan (to build the project).

Mr. McCoy asked who gives the tax credits. Mr. Franks stated the federal government gives the tax credits to the State of NH based on population. The State Housing Authority holds the tax credits. Applicants go through the rigorous and well vetted process of applying for them.

Mr. McCoy asked if they chose the design was because it will look like the Health Center. Mr. Franks stated he had said that it will have a modern look to it. It will be a modern, updated facility. It fit well into the Heavy

Commercial District. It was not purposefully done in the Health Center design (he explained the design of the Walpole, NH buildings). He reiterated that the layout and building met all necessary Town Ordinances.

Mr. McCoy stated that while it was similar in design to the Health Center, it did not meet the design of the dwellings on the west or north side of the road. The Walpole facility would be closer in design.

For clarification, Acting Chairman Nelson asked:

- \$8,000,000-9,000,000 for the project? He was told yes.
- Will it be wood sided, faux wood sided or vinyl? He was told vinyl (that will look like wood).
- Rents would be approximately \$1,000? He was told depending on the AMI: 50% rent is \$675-\$700; 60% rent is \$700-\$750 range. It will be approximately \$950 for a two bedroom apartment. Heat/AC/snow removal is included in rent. Mr. Franks reiterated the amenities in the apartments.

The costs of rents will be determined by Newport's AMI. The State Housing Authority sets the AMI, Avanru Development Group doesn't set the AMI.

Acting Chairman Nelson opened the meeting to the abutters. For the full discussion of the Board (above) and the abutters (below) visit: [www.nctv-nh.org](http://www.nctv-nh.org) or call NCTV at 863-8837 for the schedule of the ZBA meeting of July 23, 2020.

Speakers were asked to go to the mike at the BOS desk so ZOOM participants could hear.

Abutters asked several questions of Mr. Franks. Among them were:

Lori Flewelling:

- 1) Why was the area they were proposing construction on a "Heavy Commercial Zone" everything else is residential? How did that happen? Mr. Kessler (BOS Representative) stated that the legislative body of the Town, the voters, at a Town Meeting decided that one side would be residential and one side would be heavy commercial.

For clarification, Mr. Kessler stated that the Zoning Districts in Newport are decided by the people (voters) in Town.

- 2) The residential units are for working class people. They will be going to work. The cars would have to enter onto John Stark Highway; at a dangerous intersection. She couldn't imagine 40-80 cars going onto John Stark Highway. There will need to be a traffic light put in. Forty two units are too many on Spring Street. Mrs. Flewelling did not want an answer.

Scott Barrow:

- 3) All permitted uses listed look reasonable. They would probably have an exit on John Stark Highway. Mr. Barrow read aloud from the Zoning Ordinances. He stated that per the Zoning Ordinance, an abutter would view fire escapes and open windows. *He misread the ordinance and was corrected by Chairman Saccento.* Mr. Barrow told the applicant and Board members about the streets in front of the proposed building.
- 4) What is the company's LEED certification (green, platinum, gold)? Mr. Franks stated Mr. Tim Sampson (present via zoom) LEED architect on project was available to answer the question. It is also on the company website. Mr. Sampson stated he had been LEED certified for twelve years. He gave the federal LEED rating for the building.

*Acting Chairman Nelson stated that energy efficiency was out of the Zoning Board purview.*

- 5) There will be approximately 80+ cars. If there is a party, where will visitors park? Mr. Franks stated he had 87 parking spaces for the residential units.

*Mr. Kessler stated that questions on parking are purview of the Planning Board. He discussed the process.*

- 6) How will you keep the wetlands pristine? That has an effect on (Barrow's) property. *Mr. Kessler stated the Planning Board will have questions on them, but it is a state requirement.* Mr. Barrows said he had empathy for the building to be constructed, but if possible egress and ingress should be on John Stark Highway. Mr. Kessler stated the State might not permit another driveway onto the highway.

Lori Flewelling:

- 7) Would the Company consider building a twenty unit instead of a forty two? *Zoning Administrator Donovan said that is the purview of the Planning Board.* Mrs. Flewelling said she would not be against it if it was a twenty unit building.

Karen Arleo:

- 8) Are you aware there is wildlife there (she listed the animals)? You have approximately 100 people in the area. How will you keep the stream pristine? Mr. Franks said the wetlands have been surveyed and studied by a wetlands scientist. They are shown on the maps. No work will be done in the wetlands. Mr. Franks explained the state outlined process they will follow. Where will you put the park? Mr. Frank explained his options in two areas of the property.
- 9) There is a steep bank. How do you propose to keep the children safe? Mr. Franks explained the landscaping to be done to alleviate the steep bank so children can safely play there.
- 10) Will the units have balconies? No.
- 11) Where will the children play? Using the site plan, Mr. Franks showed the grassy area behind the building.
- 12) Are you allowing pets? Mr. Franks said there was a pet policy. He explained the policy which allowed some pets. The exception to the rule would be for service dogs.
- 13) What percentage of area will be paved? Mr. Franks showed the areas on the site plan. He will bring that information to the Planning Board.
- 14) **Question to the Board:** if the special exception is granted, is there a time limit in which he has to complete everything, or does the special exception expire? Mr. Kessler stated he believed it was within two years. Acting Chairman Nelson stated if it is not started within one year it lapses. Ms. Saccento added that the Avanru Development Company can come and ask for an extension.
- 15) **Question to the Board:** How many times can they ask for an extension? Ms. Saccento said they could ask several times; it doesn't mean it will be granted.
- 16) When do you plan on starting construction? Mr. Franks said their goal was to start the spring or summer of 2021.

Mrs Arleo stated she was also concerned about traffic flow. She explained the increased traffic flow was unacceptable.

Acting Chairman Nelson stating the meeting was digressing from what the Zoning Board was about. His inclination was to let people speak.

Eddie Cortez:

- 17) How long do you plan the construction to take? He was told without any problems, nine months or less.

Lori Flewelling:

18) How will it impact the neighborhood water and sewer? Mr. Kessler stated it would be favorably. There will be more users for both, "economy of scale". There is plenty of water capacity.

19) Will the units (Avanru Development Company) pay the same water/sewer rate as the current (neighborhood) residents pay? Yes.

Lori Flewelling:

20) The tax rate's the same? They would be taxed on the assessed value of the property (yes).

Scott Barrows:

21) Is there enough capacity in the sewer? Mr. Kessler stated the sewer system can hold twice what the Town is currently using. It will not strain the system? Mr. Kessler said no.

Kenneth Vigue: Thanked the Board for hearing the case again. Studies have shown that developments such as the one proposed have increased the property values in the neighborhood. There are exceptions and that is what many are concerned about.

Kenneth Vigue: Concerned with the appraiser's review (May 21, 2020) that was posted on the website. Pages were missing. Zoning Administrator *Donovan stated that the missing pages were her error. She would correct it and email a full copy to Mr. Vigue on Friday, July 24, 2020. For clarification, Ms. Saccento stated the Board had been sent the full report. Mr. Kessler requested that Zoning Administrator Donovan fix the report.*

22) In the first Zoning Board meeting Mr. McCoy asked if a buffer could be looked into. Could that request still be sent to the Planning Board? Zoning Administrator Donovan stated yes. *Mr. Kessler stated requesting it was out of the purview of the Zoning Board. If we approve the special exception, we can put a note to the Planning Board recommending that they consider a buffer. That is the Planning Board's purview.*

23) Most people are concerned about Standard C. People use the street to jog, walk their dogs, bike. Many streets have problems with speeding. A sidewalk and traffic light might be critical. *Mr. Kessler again stated it was in the purview of the Planning Board.*

There being no further questions or statements from abutters; Zoning Administrator Donovan went to get any concerned community members that were waiting in the designated room.

Acting Chairman Nelson asked how much of the three story building would be seen. Mr. Franks said the proposed building is three stories high but is set lower than the street so it will look two stories high. He was told 1 ½ stories to two stories will be seen from the street.

Mr. Ed Karr:

...I've lived here forever and I've never been kicked out of a room.

*Acting Chairman Nelson: Things are different now. You are wearing a mask, you understand.*

24) I don't think it is an attractive building to add to the community. *Ms. Donovan stated if it moves to the Planning Board that will be addressed.*

Today the character of the neighborhood is residential. Mr. Karr asked the Board members to consider that. The scale of the building is out of character of the neighborhood. Mr. Karr stated if the Zoning Board does not have the answers to all the studies (in the Planning Board purview) the Zoning Board should not approve the Special Exception. Continuing, he asked:

25) You did an environmental impact study? *(did not wait for answer)*



- 26) You said pending a traffic study? How can you allow it/approve it? *(Mr. Karr again did not wait for an answer)*
- 27) You talk about Planning Board, what if they don't..? Acting Chairman Nelson said then it won't pass Planning. *Acting Chairman Nelson said that the purview of the Zoning Board is the use. He listed the purview of the Zoning Board and the purview of the Planning Board.*

Mr. Franks addressed Acting Chairman Nelson and stated he had met with the Newport Director of Public Works, Todd Cartier. Mr. Cartier directed them to have two ingresses/ one egress and indicated their placement. The engineer for Avanru Development Group complied with his request. There was full transparency with Mr. Cartier about the size of the building and the potential number of vehicles. He had no concerns. The Fire Chief was given the same information, he had no concerns. Fire Chief Yannuzzi checked to make sure there would be access for emergency vehicles around the proposed building.

Mr. Franks stated the Avanru Development Group had worked together with Town officials to make sure their planning incorporated the Town officials input.

Addressing Mr. Karr he reiterated information on potential number of vehicles. He stated the Avanru Development Group follows and adheres to all Town regulations in their planning. Mr. Karr expressed his frustrations with the numerous number of traffic studies of the area and trying to get the roads fixed.

Tom Gallagher:

On the merits of granting the exception, I don't know how putting a 42 unit multi-family building on that quiet street is going to increase anyone's property value. It's nice when it is new. After seven years it's a different story. It is the wrong place for it.

Mr. Franks said it was an excellent question about the upkeep of the building. He would like to address it. It was required in the Phase Two of a 22 unit project in Walpole that he set aside at closing \$100,000 in an escrow account for the upkeep of the building with the State of New Hampshire. Approximately \$150,000-\$200,000 would go into an escrow account at closing with the state for maintenance for the Newport building. \$500.00 per unit per year (\$21,000/yr.) has to be contributed to the escrow account. Investors leave nothing to chance. There is an enormous amount of money set aside for exactly what Mr. Gallagher is talking about. He explained the financial information to the Zoning Board.

Ed Karr:

- 28) Will the Avanru Development Company get a break on the property taxes? Zoning Administrator Donovan stated no, the project does not fall under 79-E.

Scott Barrows:

- 29) How long will you be involved with the business? In perpetuity? Will you build it, and then sell it? Will the Town be left with operating the building? Mr. Franks said that it was a very good question. Mr. Franks explained the process that was involved. He stated there would always be a certified management company, always be an escrow account holding money to use for renovations/refurbishing. NH Housing Authority has never had a company/building that has been foreclosed. He gave a testimony of how well run and fully regulated the process is. Investors wanted to make sure it is done right.
- 30) Is the Avanru Development Company project predicated on getting tax credit from the government? Correct. If we don't get the tax credit, it doesn't happen.

Mr. Karr thanked the Board for letting the community and abutters speak. They had a lot of information to consider.

Abutter Karen Arleo read aloud a petition and asked that it be entered into the record as read (Appendix One).

Abutter Kenneth Vigue asked that his statements and questions be entered into the formal record as stated and read (Appendix Two).

Randy Arleo voiced his opinions on Case #1090.

Mr. Franks thanked the abutters and the community members for coming out to the Zoning Board meeting. He stated he was glad the Board agreed to hear the case again, so the abutters could voice their concerns. He wanted to thank the Board members for coming out again to hear the case. He read aloud a prepared statement to the Board and public in attendance.

On a motion by Mr. McCoy, seconded by Mr. Kessler; ***the Board voted by roll call vote to go into Deliberations. The motion passed 4-0-0.***

In discussion, Mr. McCoy stated he had a problem with potential impact of traffic after hearing from the neighbors. He described the layout of the roads that made it a potential traffic hazard.

Ms. Saccento agreed that traffic was an issue. She stated that the way the case was submitted, the Board was approving a Special Exception on a dwelling for two or more families; nothing specific. The way it is worded, the Board has no control of what actually goes in. *Zoning Administrator Donovan stated the zoning is just the request for use in Heavy Commercial (B2). Ms. Saccento was told it isn't legal to put in specifically workforce housing. It would be considered discrimination.*

Ms. Saccento stated there was a discrepancy between the wording of the case description and the application. *Zoning Administrator Donovan reiterated that she could not change the wording of the case to stipulate workforce housing. It would be discrimination.*

Acting Chairman Nelson stated they were treading on thin ground. He asked to continue the Deliberations.

Mr. Kessler stated the land was in the Heavy Commercial (B2) Zone. It is a permitted use by Special Exception. In the Newport Zoning Ordinance there are no conditions on Special Exceptions. He did not see where the Zoning Board could legally not approve it.

Continuing, he said that the fact that across the street it is zoned different has no legal bearing on what is on this side of the street. The traffic is a Planning issue. Abutters and community members should bring it up at Planning (Board). If the streets need to be redesigned, it will be determined there. As far as the use, he was not seeing anything that legally gives us (Zoning Board) the option of not approving it (Special Exception).

Mr. McCoy asked how he addressed the case. He did not consider things (positively) of that size and scale, noise. The document that he is asked to fill out (as a ZBA member); how did he not consider these things.

Ms. Saccento said it was one of the questions they had to answer. Mr. McCoy reiterated his concerns in deliberating the case. To say there is no legal reason to approve the Special Exception.

Mr. Kessler addressed Mr. McCoy and stated they (Avanru) could legally put in a three story hotel with traffic coming and going. He asked Mr. McCoy how the apartment building would be different.

Ms. Saccento stated the Newport Highway Department had looked at the site. Zoning Administrator Donovan stated that Fire Chief Steve Yannuzzi had looked at it in the safety aspect. Mr. Cartier, Director of Public Works will be involved with the Planning Board. All aspects of traffic are in the purview of the Planning Board.

There was a lengthy discussion on the use and potential use of the land in a Heavy Commercial (B2) Zoning District and how it reflected the answer given on the zoning document by the Zoning Board members.

Zoning Administrator Donovan explained to the Board members that deliberations concern only the B2 Zone, not the neighborhood.

Decisions (from her understanding) are made as to how it will affect the B2 Zone (only). Those are the rules as written by the residents of the Town of Newport.

Acting Chairman Nelson stated Special Exception is the lowest hurdle there is.

Ms. Saccento stated that many townspeople live on the edge of Zones-she is Rural and abuts an Industrial Zone.

There was a lengthy discussion on the use and potential land use in the B2 Zoning District.

Mr. Kessler clarified that the land in question was in a Heavy Commercial Zone with an entrance on Spring Street.

Zoning Administrator Donovan stated there was already a multi-family dwelling built on Spring Street. They were on the Heavy Commercial side of the street, and it was approved. They are a precedent for the area.

When/if they go to Planning (Board) wouldn't Planning be looking at all the items there are questions about (traffic, etc.)? Zoning Administrator Donovan stated they go into grave detail. They also take public comment into consideration.

There were further deliberations. Concerns by Board members included:

- Intersections on both ends of Spring Street.
- Traffic (both vehicular and foot)
- The significant investment into Newport
- Redesign street layout
- Recommendation for a buffer along the street
- Commercial traffic
- Multi-family dwelling next door
- Meeting Standard C on the Zoning members official worksheet
- Recommendation for a traffic study

Mr. Kessler asked if the Zoning Board asked for a traffic study, were they qualified to consider it?

Mr. McCoy stated that with the traffic study it will be a special request. He will not be able to understand it. The Zoning Board had two options: traffic study or find that the case does not meet Standard C.

Mr. Kessler and Mr. McCoy discussed the need for a traffic study and any results.

Mr. Kessler stated the Zoning Board could not speak in generalities. Otherwise the applicants could take the Town to court and get the decision reversed. He asked Mr. McCoy what determined too many vehicles on the road (Spring Street). Mr. McCoy said an unsafe amount. Mr. Kessler asked for a number.

Acting Chairman Nelson stated the Board members were talking about a subject (traffic) they were not experts in. Acting Chairman Nelson stated they did not have to make a decision at the June 23, 2020 meeting.

Mr. Kessler stated the Board had to state what made the road unsafe. It could not be just the number of cars. Mr. McCoy stated he needed more information. A traffic study might be necessary to show the use will not be detrimental to the overall character of the neighborhood.

The Board members discussed the aspects of using a traffic study; who would do the study (Upper Valley Lake Sunapee Regional Planning Commission was suggested), the results of a traffic study as well as the Town officials input.

Mr. Kessler made a motion that the Zoning Board table Deliberations on Case #1090 and request the Town to contract with the Upper Valley Lake Sunapee Regional Planning Commission or appropriate agency to conduct a traffic study to determine the impact of additional traffic from a 42 apartment unit on intersections at John Stark Highway and Elm Street and Spring Street itself. In discussion, Acting Chairman Nelson suggested that the cost of the study be shared. Mr. McCoy asked for the motion again.

Mr. Kessler made a motion that the Zoning Board table Deliberations on Case #1090 pending receipt of a traffic study on Spring Street, intersections at Elm Street and John Stark Highway from a proposed 42 unit multi-family dwelling.

Mr. Bill Hutwelker, on behalf of the applicant, asked:

1. If the Zoning Board had the authority to take the issue of a traffic study out of the hands of the developer? In his experience (thirty years on his own Zoning Board) they have always required the developer to do the traffic study.
2. Do you know if the Upper Valley Planning Commission has the capacity and the time to turn around a traffic study in a timely fashion? Southwestern Planning (their Commission) would not.

Zoning Administrator Donovan stated she had to look at the laws. She believed they had a thirty-fourty five day window to vote on the case.

Ms. Saccento stated that was to rehear the case. There was a discussion among the Board members as to how much of the case needed to be heard. Mr. Kessler said that Acting Chairman Nelson would announce tonight what the new day and time was so it would not need to be re-noticed.

Zoning Administrator Donovan stated she believed the ZBA could approve it dependent on a traffic study.

Mr. Franks stated that limiting the company to who can do it (traffic study) and who can do it in a timely fashion is limiting the scope. The company is limited in a set amount of time to make the applications complete. If it falls outside the Zoning Board's purview and you have spent all this time deliberating... The last time (hearing) there was a recommendation that the Planning Board look at this. He explained there would be a lot of work done and additional information (he listed it; including the traffic information) that would be compiled for the Planning Board.

Mr. McCoy asked if Mr. Franks had the information now. He was told that New Hampshire Housing had it on their website. Mr. Franks reiterated that they had met with the Director of DPW and Mr. Cartier did not have an issue with the project. Mr. Franks was planning on bringing the additional information to the Planning Board.

Mr. McCoy addressed Acting Chairman Nelson and asked if the Zoning Board was breaking protocol.

Ms. Saccento asked if there could be a time limit to have the developer bring a traffic study from UVLSRPC or another group to the Zoning Board. There was a discussion on completion within a time frame.

Acting Chairman Nelson addressed the applicants and asked what the normal time was to complete a traffic study.

Mr. Franks stated that if they had to wait for 60 days for a traffic study from UVLSRPC, they could not complete their applications to the state. The project would not proceed. He has a strict set of guidelines. He reiterated that they talked to the fire department and the public works department; he realized there were forty units going in. they went by the statistics for Family Housing. There are three exits. If he thought they needed a traffic study, there would have been one done beforehand. He questioned asking only one company.

Acting Chairman Nelson stated he did not have a problem with someone else performing the traffic study. The applicant could not tell the Board the traffic count on Spring Street. No one in the room could.

Abutter Lori Flewelling stated the problem was getting on to John Stark Highway. It was dangerous. It's not so much the number of cars going in and out (of the development) as it is the intersection of John Stark Highway.

*Zoning Administrator Donovan stated that traffic studies were the purview of the Planning Board.*

Ms. Saccento addressed Zoning Administrator Donovan and stated that on the Zoning Board worksheet for Standard C it questions traffic.

Mr. Kessler stated that the neighborhood traffic issue is not limited to this proposed use (case). It has been an issue on all the (mentioned) streets for years.

Mr. Franks addressed the Chairman and stated that the only ones who have presented the Zoning Board with evidence were the applicants. People have talked about it; the applicants have provided evidence. The Board is talking about additional information as evidence. The applicants provided evidence on July 23, 2020. Unless someone at the meeting is totally versed on traffic and engineering, the information he has presented answered the questions.

Mr. Franks appreciated the concerns, but asking the Planning Board to conduct the traffic study is within the Zoning Board's purview. He requested that the evidence that was presented be taken into consideration. The Board has heard individuals (community members) opinions, but he asked the Board to consider what he (applicant) has presented. Usually the Planning Board asks for the traffic study.

Acting Chairman Nelson stated that the third question, Standard C, asks about traffic. He referred to the thumbnail document about the traffic; the Zoning Board doesn't know the traffic count on Spring Street. There was discussion between the Board members and Mr. Franks on the appraiser's document concerning traffic on Spring Street.

Acting Chairman Nelson stated he would entertain a motion to continue to August 6, 2020 at 6:30 pm at which time the Zoning Board will have a count on Spring Street. We will hear from Fire Chief Yannuzzi and any additional traffic information the applicants can give.

Mr. Franks asked if there was anything else the Zoning Board will request. He was told no. Mr. Franks stated he would work expeditiously and bring as much data as possible. Acting Chairman Nelson thanked Mr. Franks and told him he appreciated his efforts to get the information.

Mr. McCoy asked what information would be brought to the Zoning Board. Mr. Kessler stated they needed to find out where the appraiser's numbers came from. Mr. Kessler asked who determines an acceptable amount.

Mr. Hutwelker questioned what the Zoning Board would do with the traffic study. Finding out the appraiser's numbers was one thing. A whole traffic study was another. It will not answer the specific questions that have been asked by Board members.

Continuing, Mr. Hutwelker asked if the applicants can document where the appraiser's numbers came from and have the Director of Public Works verify that the road can handle the amount of proposed vehicular traffic per day, would that be satisfactory? Because NH Housing has the entire "trip" data that facilities like this will generate. We know we can present it to you.

Acting Chairman Nelson stated that would be the thing to do.

Mr. Hutwelker stated it all came down to someone assuring the Zoning Board members that the road can handle that traffic. If your DPW Director (Todd Cartier) came in and stated yes the road can handle the traffic; or if we had someone from the state come in?

Mr. Kessler said that maybe someone from the state DOT saying that the John Stark Highway intersection could handle the additional traffic.

Mr. McCoy said that every time he sits on a case he is asked to give a verdict. Right now he did not want to make a verdict on this case to be fair.

Ms. Saccento said she understood Mr. Frank's frustration. Last time we did not get input from abutters. Mr. McCoy asked if there was a time limit. Acting Chairman Nelson stated if the next meeting's date and time was announced it would not have to be re-noticed.

Mr. Kessler made a motion ***to continue the Deliberations to August 6, 2020 at 6:30 pm in the BOS Room to receive additional information.*** It was seconded by Mr. McCoy. ***The motion passed by roll call vote 4-0-0.***

On a motion by Mr. Kessler, seconded by Mr. McCoy; ***the Board voted to adjourn at 10:02 p.m. The motion passed by roll call vote 4-0-0.***

Respectfully submitted,

Maura Stetson  
Scribe

Approved August XX, 2020