

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

**Remote Access:**

**Zoom.com - Meeting ID:** 823 3731 5131    **Password:** 171106  
+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:** not listed

**PRESENT via PHONE:** no one

**ABSENT MEMBERS:** Tim Beard

**VIDEOGRAPHER:** John Lunn, NCTV

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

**ABUTTERS PRESENT:** Scott Barrow, Pam Venable, Karen Arleo, Randy Arleo

**COMMUNITY MEMBER PRESENT:** Ed Karr

**APPLICANTS PRESENT:** Jack Franks and Bill Hutwelker

**CALL TO ORDER:** Acting Chairman Nelson called the meeting of the Zoning Board of Adjustment to order at 6:40 p.m. He acknowledged Zoning Administrator Donovan.

**ADMINISTRATION:** Zoning Administrator Donovan addressed the ZBA and the public in attendance. She stated that Chairman Melissa Saccento had resigned from the Board effective immediately. (She would not be in attendance to sit on the case). Mr. Ben Nelson will be Acting Chairman until further notice.

Acting Chairman Nelson introduced himself and the sitting Board members. Mr. McCoy was appointed to sit for Mr. Tim Beard.

There was a lengthy discussion between Board members and Zoning Administrator Donovan on each of the following:

- ❖ The use of a new worksheet for the Case. Mr. Kessler read aloud from the Zoning handbook (Section 306.1) and stated that the previously used worksheet had to be used. Acting Chairman Nelson concurred.
- ❖ The need for a consensus vote on each Standard. Acting Chairman Nelson stated that there needed to be a member vote of three affirmatives for each Standard. Therefore if Case #1090 went forward August 6, 2020 each Standard would have to be a consensus of the sitting members.
- ❖ Continuation of Case #1090 until there was a four member quorum. There could then be a dissenting vote and the application would still pass the Standards and the Special Exception would be approved.

Acting Chairman Nelson addressed the applicants and asked if they would like to have the hearing continued to another date. If the Board heard the case August 6, 2020 the three sitting members would have to all vote in the affirmative for all three Standards.

- ❖ The legality to have Zoning Board member Tim Beard sit on the case. He had not sat on the previous hearings for Case #1090 and the legality to have Zoning Board member Tim Beard sit on the case as motioned at the July 23, 2020 meeting.

Mr. Franks, applicant, asked for clarification that the Zoning Board members would all have to vote in favor of each Standard to approve the Special Exception application. Mr. Kessler said that if heard tonight (with three members) and there was a Standard with one member voting no; it would fail. Mr. Franks requested that the Zoning handbook (language) be reread. Mr. Kessler read aloud Section 674:3. Mr. Franks stated, for clarification that the Zoning Board members had to be in agreement on every one (Standard). If the vote was 2-1-0 they would come back for a new application.

Mr. McCoy said he read the RSA to mean if there is one dissenting vote, the application does not pass. There was a lengthy discussion between the applicant and Board on the RSA meaning and the approval or denial of an application.

- ❖ Chairman Nelson addressed the applicant and stated he had the choice of proceeding with three members or rehearing the case at a later date with more members.
- ❖ There was further discussion on rehearing the case a third time or only having to go through Deliberations. The applicant asked when the opportunity would be available.
- ❖ Whether Case #1090 would have to be reheard in full with new Board member Timothy Beard. Zoning Administrator Donovan stated she would check with Town legal counsel.
- ❖ The amount of time (days) in which the hearing had to be heard and a decision made by the ZBA. Section 676.2 stated 45 days after the notice of appeal. The deadline was August 14, 2020. A new hearing was decided for Thursday, August 13, 2020. Zoning Administrator Donovan will have legal (Town counsel) at the meeting.

Chairman Nelson addressed Zoning Administrator Donovan and requested she contact Town counsel and ask if it is legal to have ZBA member Tim Beard read the minutes of the July 23, 2020 meeting and sit in hearing for Deliberations only or if there needed to be a rehearing.

Chairman Nelson addressed Mr. Franks and asked if he would agree to that. He agreed. Chairman Nelson stated the other option would be July 20<sup>th</sup>. He would be absent and there would only be three ZBA members.

Zoning Administrator Donovan said that she would contact legal counsel concerning all aspects of Case #1090. They would then decide whether to open the case in Deliberations, or have a rehearing. No abutters' notices would be sent; the final motion announcing the continuation of the case would be sufficient.

There was a discussion on the motion of the meeting on July 23, 2020 and how the ZBA will proceed.

Abutter Scott Barrow spoke stating he would like a portion of the next meeting to be informational to bring the other abutters and citizens "up to speed" on the hearing. Mr. Kessler stated if it was a rehearing, they would follow the ZBA format. Abutters would be allowed to speak to items within the purview of the Zoning Board. There was a discussion about a new Board member hearing the case between the applicant, Board members, abutters and Mrs. Donovan concerning the continued hearing and legalities.

Chairman Nelson stated it was his inclination to allow abutters to speak.

Chairman Nelson stated that if counsel stated a rehearing was necessary he would entertain (allow) new information from abutters. Mr. McCoy asked if new data had been restricted to new information from the applicant. He asked if abutters would be allowed to present new data.

Mr. Kessler made a motion *to continue Case #1090 until August 13, 2020 at 6:30 p.m. to hear the case.* It was seconded by Mr. McCoy. *The motion passed 3-0-0.*

Mr. Karr addressed the Chair and asked if new information could be presented. He was told yes. Mr. Karr wanted it clarified so there was no mix up again. Chairman Nelson stated that now (if rehearing) new information would be allowed from both applicant and abutters if pertinent to Zoning. There was further discussion on new information and the person who can present the information.

Recording Secretary Stetson read the motion from the July 23, 2020 meeting into the record: 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.* For those present, she explained that the motion meant if Case #1090 was heard as the motion read, only the applicants could provide additional information to the Zoning Board members, the abutters did not. Everyone would wait for the Board members to deliberate with the information provided.

Chairman Nelson stated the motion now was to continue Case #1090 until August 13, 2020 at 6:30 p.m. to hear the case. He added that additional information pertinent to Zoning would be allowed from the applicants, abutters and the public.

Mr. Randy Arleo, abutter, stated that the ZBA referred to the law that only abutters could talk (at the hearing) and not taxpayers. He spoke sharply to Zoning Administrator Donovan and told her to be quiet, told Board members he had the floor and when he was reprimanded by the Chair ignored him. Addressing the Board, he asked if any of the sitting ZBA members have knowledge that any taxpayer paid any money out, or if these boys (applicants) gave a kick back to the Town? Applicant Jack Franks objected. *Mr. Arleo didn't wait for an answer from the Board, said that their (ZBA members) silence was an answer.* Chairman Nelson stated he was not going to respond to such a stupid question.

Ms. Donovan said she could get the abutters and others information about the RSAs, who could speak, the authority of the ZBA or any other information they wanted.

Mr. Kessler read aloud RSA 672:3 as to the authority of who could or could not be heard at a hearing.

Acting Chairman Nelson addressed the public present reminding them that he had not limited information or participation to the abutters. There was an exchange between Chairman Nelson and Mr. Arleo about his negativism and bad attitude. Mr. Arleo expressed his frustrations.

On a motion by Mr. McCoy, seconded by Mr. Kessler; *the Board voted to adjourn at 7:27 p.m. The motion passed 3-0-0.*

Respectfully submitted,

Maura Stetson  
Scribe

Approved August XX, 2020

DRAFT