

Zoning Board of Adjustment
August 13, 2020 6:30 PM
Board of Selectmen's Room/Municipal Building
15 Sunapee Street/Newport, NH

Remote Access:

Zoom.com - Meeting ID: 849 3551 3490 **Password:** 208280
+1 (929)-205-6099 US (audio only, long-distance fees may apply)

PRESENT BOS ROOM: Ben Nelson, Acting Chairman; Jeffrey Kessler, BOS Representative; Tim Beard, Scott McCoy, Alternate

PRESENT via ZOOM: James P. Harris, Esq. of Sheehan Phinney Bass and Green; Avery Franks

PRESENT via PHONE: no one

ABSENT MEMBERS: none

VIDEOGRAPHER: John Lunn, NCTV

STAFF PRESENT: Christina Donovan, Zoning Administrator

ABUTTERS PRESENT: Dale Flewelling, Lori Flewelling, Pam Benable, Kathy Arleo, Scott Barrows

COMMUNITY MEMBER(S) PRESENT: Ed Karr

APPLICANT AND AGENT: Jack Franks, Bill Hutwelker

CALL TO ORDER: Chairman Nelson called the meeting of the Zoning Board of Adjustment to order at 6:45 p.m., introduced the sitting members and appointed Mr. Scott McCoy (alternate) to sit for the empty seat.

ADMINISTRATION: Chairman Nelson stated the case has taken so long because the ZBA wanted to make sure everything has been done correctly both procedurally and for the abutters and applicants. Zoning Administrator Donovan has been on the phone with the Municipal Association Lawyers and they both held a conference call with the Town attorney. From those conversations the Zoning Board of Adjustments (ZBA) will start over again (hearing Case #1090). It had been discussed that Mr. Tim Beard might be able to read the case minutes, get the information and the ZBA would start the case in Deliberations. The attorney's advice was to rehear the case from the beginning. That is how the ZBA will proceed with Case #1090. Chairman Nelson explained the ZBA format to the applicants, abutters and public in attendance.

Chairman Nelson reiterated that the attorneys stated the Special Exception Case will be judged by what is allowed in the B2 (Heavy Commercial) Zone. The Deliberations will be on the B2 Zone, not the neighboring zones. He further instructed the Board members on the guidelines that the ZBA had to follow to correctly assess, decide and answer Standards A, B and C in Case #1090.

Reiterating information from the Town attorney, Zoning Administrator Donovan stated the ZBA members had to judge the case on the zone (B2 Zoning District) where the land resides. When the ZBA talks about the neighborhood, they are talking about the zone the land is in (B2), not neighborhoods in other zones. Also, questions should only refer to Zoning Board oversight. If the case goes to Planning

Board, then everyone will have a chance to speak to Planning Board. Again, Zoning Administrator Donovan stated the case has to be decided on the zone it resides in; the ZBA can't bring in other zones (for Deliberations or decision). If decisions were made due to neighboring zones, the Town wouldn't have zones.

Chairman Nelson read aloud a section from the NH Zoning Board of Adjustment Handbook, NH Office of Strategic Initiatives (Appendix I). He emphasized each point to Board members and public in attendance.

MINUTES: None

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 Nelson opened Case #1090.

Mr. Jack Franks, applicant, addressed the Zoning Board members and thanked them for their time in hearing his case (Case #1090) and also the abutters who came out to the meeting as well. He stated that before he proceeded, his attorney James P. Harris, Esq. of Sheehan Phinney Bass and Green; was on zoom and would like to address the Board. Chairman Nelson acknowledged Attorney Harris.

Attorney Harris addressed the Zoning Board members and thanked them for the opportunity to join the hearing. He stated there have been some unusual aspects to do with the project he wanted to convey on Mr. Franks behalf they were hopeful that they would get a fair review and that the request will be approved. Attorney Harris stated that he hoped the discussion would be productive. He understood there would be further review by the Planning Board. He stated that:

- 1) Avanru Development had the Constitutional protected right to be treated like any other applicant requesting a Special Exception.
- 2) There was concern that the proposal will create undue traffic congestion. *Mr. Franks will address that.* Attorney Harris read from the NH Zoning Board Handbook of the approved uses that did not need a special exception or review by the Zoning Board. He stated those uses would create a far greater traffic impact.
- 3) Attorney Harris had one request of the ZBA. If the Zoning Board of Adjustment members did not approve the Special Exception for Case #1090; make specific and detailed findings of the reason for the record.

Attorney Harris thanked Chairman Nelson for allowing him to speak. Mr. Jack Franks, applicant, was acknowledged to present his case.

Mr. Franks stated that his company, Avanru Development Group, was out of Walpole, NH. They were requesting a Special Exception to build a 42 unit multi-family unit on the site. Their intent was to build 42 units of affordable housing for the Newport community. Mr. Franks said there would be 24 one bedroom/one bathroom units and 18 two bedroom/two bathroom units. The property is located in a B2 Heavy Commercial Zoning District.

The proposed building meets all of Newport's zoning requirements for setbacks, height and parking. Avanru Development has met all zoning requirements for the Town of Newport. The setback from the road will have the building 12-14 feet below the grade of Spring Street. One and one half stories of the building will be above grade of the road height. They believed it was a great location to build because there will be easy accessibility to many

places in Town from this location. It will be a close walk for people to the Newport Shopping Plaza. There has been discussion with the current land owner (Lannon Company) adjacent to the property to put in a walkway to the Plaza.

He explained the need of having affordable housing in Newport for those in the workforce. He told the Board and public in attendance that NH had a less than 1% vacancy rate in their rental housing units.

The Avanru Development Company is excited for the opportunity to build in Newport at this location.

They will use modular technology created by the company to create fast and energy efficient units.

In a statewide energy audit, his company was found to have one of the most energy efficient units (see handout).

The company plans to build a similar (energy efficient) facility in Newport that will limit carbon emissions.

Mr. Franks stated they hired an onsite management company, Hodges Management out of Concord, NH. The professional management company is monitored and regulated by HUD (Housing and Urban Development) and by the State of New Hampshire (NH). We have a detailed management plan. The Hodges Management Company has been in business for over fifty years.

Using the posted site plan, Mr. Franks listed the exterior features of the proposed project and how it met the Town of Newport's Zoning regulations. He told the Board that he has personally met with the Newport Department of Public Works (DPW) at the site location as well as other Town officials. The Fire Department approved of the ingress and egress to the parking lot. The professional civil engineer and architect for the project included their requests into the proposed plan.

He read aloud a letter concerning the traffic study from himself to Zoning Administrator Donovan into the record (available in the Zoning Office). Mr. Franks stated Avanru was at 28% of what the NH Department of Department (DOT) would require for a traffic study review. They had no concerns about John Stark Highway and traffic. Mr. Franks briefly reviewed the other letters in the packet (available in the Zoning Office).

Mr. Franks addressed the Board and stated (as his attorney had mentioned), what could go in without review by the Zoning Board or notice to abutters. He stated those uses compared to this use (which an assessor stated was the least impact of what could go into a B2 Zoning District) was substantial.

Reiterating the character of the facility Mr. Franks listed:

Three story building

42 Units

Ample parking (85 spaces)

Multiple ingress and egress

Setback 100+ feet from the road

With permission from Chairman Nelson, Mr. Franks read aloud his application for a Special Exception into the record (available in the Zoning Office).

Mr. Franks reiterated they had a professional licensed civil engineer, professional licensed wetlands scientist and professional licensed soil scientist. Their team was capable of constructing a well thought well engineered and well managed building on the property.

The Board members were asked if they had any questions.

Mr. McCoy asked, for clarification, if they proposed 85 parking spaces. Mr. Franks stated yes.

Mr. McCoy asked what Mr. Franks feelings on the number of vehicles that will be based at the facility. Mr. Franks explained, comparing the proposal to a similar building with 43 units; there were 59 cars there. Mr.

Franks anticipated being at 75% capacity (maximum) at the Newport building. He estimated 60-62 cars at the building. He concluded his answer saying that if every unit had two cars, there would be enough parking spaces for them.

Chairman Nelson opened the hearing to the abutters.

Mr. Scott Barrows stated he admired the aspect of the low cost housing; he had no objections to that.

Mr. Barrows stated he had issues and concerns with other things; they might need clarifications:

- 1 Safety and traffic. Traffic on Spring Street has not been addressed. John Stark Highway is better handled to the influx of traffic than Spring Street.
- 2 Overflow parking, such as a party or construction workers building the apartment.
- 3 Character of the neighborhood; his point of view will be changed from woodlands to the building, propane tank, dumpster and older vehicles that might be in need of repair.

Mr. Barrows spoke of a spring on his property. Chairman Nelson stopped him and stated that wasn't zoning. Drainage is for the Planning Board. Chairman Nelson said that the Zoning Board was about the use.

Mr. Barrows concluded saying the project was an admirable thing to do. Newport needed it, but he believed the traffic was a safety issue which is the purview of the Zoning Board, the character of the neighborhood will be altered (his personal view) from his house and his neighbors. He thanked the Board.

Mr. McCoy, Board member, addressed Chairman Nelson and asked for the floor. He questioned the number on a letter they were given. Mr. Franks stated that a number in the letter had been transposed; instead of 24 it should read 42.

Chairman Nelson asked the applicant to answer Mr. Barrow's questions before they proceeded further.

- The vehicles. The management company has very strict regulations regarding vehicles and working on them. It won't happen per the lease. No unregistered vehicles will be allowed on site.
- The propane tanks will be buried.
- Dumpsters will be enclosed and kept closed at all times (tenants will have access to the dumpster to dispose of their trash).
- Trees and shrubbery. That will be addressed at the Planning Board. Mr. Franks said he was willing to take advice from the Planning Board as to what they would like to see concerning trees or a fence along Spring Street.

Mr. Ed Karr said that he spoke for the people based on what an abutter is: anyone whose land is affected. Mr. Karr stated the ZBA said they could only pass judgement on that zone (B2). He believed there were issues that would need to go to the Planning Board for discussion.

1 Safety issue. Need a traffic study for traffic flow on Spring Street. There are four places (streets) that can be used to enter the road to the units. They are currently and have been a hazard for years. Any growth to the current traffic is even more hazardous.

He had testimony (a petition) with 16 signatures stating the traffic is hazardous. Mr. Karr addressed the Chair and submitted accident reports of the four intersections from the Newport Police Department. Chairman Nelson asked for the total number of accidents over the number of years that Mr. Karr was presenting. The time frame was 10 years and total number of accidents is 43. There was a general discussion between the Board, applicant and Mr. Karr about changing the intersection onto Elm Street as well as the truck lane in the area. There was a short conversation concerning traffic between Mr. Karr and Mr. Franks.

Mr. Franks addressed the Board and reiterated he had reached out to the NH DOT concerning the turn onto the John Stark Highway. They were told the Avanru Development proposal area was at 28% of what the NH DOT

would require for a traffic study review. He reminded them what could be built there instead of the apartment units.

Karen Arleo, abutter, stated she had two overwhelming concerns:

1. Wetlands. The pristine stream and wildlife that are seen will be impacted by the development and construction.
2. Children and safety hazard. The company plans a grassy area in the back, but children will be riding bikes, etc. on the road. Getting the children to school will be a hazard due to the insufficient Town street lighting and lack of sidewalks or traffic lights.

Mr. Franks addressed Chairman Nelson and stated that the items of concern would be discussed at the Planning Board. Chairman Nelson agreed, stating the wetlands were the purview of the Planning Board.

Mrs. Lori Flewelling stated that she lived on Spring Street. She expressed the difficulty in driving onto John Stark Highway. She said that the intersection onto the highway was not safe. Mr. Barrows concurred and stated that Google maps direct drivers to Belknap Street to Pine Street straight on to Unity Road.

Mr. Karr stated that the testimony (petition) and the safety concerns expressed by citizens concerning the intersections which impact the whole Town and will impact the Town emergency services. It can be discussed at Planning Board, but the ZBA will have already approved the Special Exception. Mr. Karr gave worst case scenarios concerning the additional number of vehicles on the streets and potential traffic accidents with the building of the 42 units. I understand you have to deal with the number of 42. But take everything into consideration.

Chairman Nelson addressed Mr. Karr and stated traffic will be considered in the motion by the ZBA. He told Mr. Karr not to worry about it escalating. Mr. Karr addressed the Board one last time about their voting on the Special Exception.

Before Chairman Nelson closed the hearing, he stated that Zoning Administrator Donovan had again contacted the Police, Highway and Fire Departments; Conservation Commission and the building inspector concerning the project. Zoning Administrator Donovan explained to Mr. Karr that all those listed had been contacted and will weigh in with comments at the Planning Board meeting.

Mr. Karr asked if they looked at plans or went on site. He was told they went onsite and they looked at the plans. Mr. Karr expressed his concerns that some department heads do not live in Newport and would not know of the history of the area and recorded traffic accidents.

Chairman Nelson again explained the current and continual process of addressing the abutters concerns with the Planning Board and department heads.

Mr. Barrows stated, for clarification, that the Police Department did not sign off on the traffic. They signed off on the potential crime aspect of the project. Zoning Administrator Donovan stated that the Police Department did sign off; they stated if the project was built they saw no concerns in the neighborhood. That was from the police perspective. For clarification she said: crime, fire and safety for everyone (in the area), the roads and the building inspector who will check on the progress (and has to follow state building codes) throughout the construction.

Chairman Nelson stated he was closing the hearing and told the public and Board members in attendance that he wanted them to remember what he had read aloud at the beginning of the Zoning Board meeting "he didn't come up with". The rules and regulations for the ZBA members are from the Zoning Handbook from the State of NH (OSI Zoning Board of Adjustment in New Hampshire Handbook for local Officials). He emphasized it was from the State of New Hampshire, not Newport. The case procedure is not a "vast conspiracy".

Chairman Nelson asked if there were further questions from the Board.

Mr. McCoy, for clarification, asked if the number written in the letter from Mr. Rob Dapice concerning traffic numbers given to the Board should be 42 (units) instead of 24 (units). He was told he was correct.

Mr. McCoy read aloud parts of the letter and asked Mr. Franks about the rest of the potential traffic numbers in the letter. Mr. Franks stated that the other numbers should be increased to match the increased number of units.

Mr. Kessler asked for the total number of accidents on the four intersections over the ten year span. He was told 43.

Chairman Nelson stated that he concurred that every time he turned on his GPS Google maps directed him down Elm Street instead of the John Stark Highway. The through traffic on Elm Street is “nuts”. The locals are ones that use it to avoid the traffic lights in Town. He would like to see the Board of Selectmen do something about it. Regardless of the zoning case, that needs to be addressed.

Chairman Nelson addressed Mr. Franks and stated he had mentioned working with the owners of the abutting land and Plaza about a footpath. He asked how those negotiations were going. Mr. Franks stated they had just had cursory discussions with one of the partners. Chairman Nelson expressed his opinion that it would be good for the Plaza and business; it would make things more accessible to those without cars. He concurred that John Stark Highway and Elm Street were not good options for walkers. If there was a footpath to the Plaza there would be an access to every sidewalk in Town. He would love to see that happen.

Mr. Franks stated he will discuss it with the wetlands scientist and talk with the Department of Environmental Services (DES). He will see if they can come up with a plan for a walking bridge without harming the wetlands.

Chairman Nelson asked for a motion to go into Deliberative Sessions.

On a motion by Mr. McCoy, seconded by Mr. Beard; ***the Board voted to go into Deliberative Session for Case #1090. The motion passed 4-0-0.***

Zoning Board of Adjustment Special Exception

Chairman Nelson asked for a motion and vote on each Standard.

Standard A

Mr. Kessler made a motion that: ***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.*** It was seconded by Mr. Beard. In discussion, Chairman Nelson requested a recommendation to the Planning Board for a buffer on Spring Street. Mr. McCoy stated the ZBA was considering the Standard in a Heavy Commercial Zoning District (B2). Chairman Nelson said yes. Mr. Kessler also stated that the land had been commercial since May 1988. ***The motion passed 4-0-0.***

Standard B

Mr. Kessler made a motion that: ***The proposed use will not be injurious, noxious or offensive or in any way detrimental to the neighborhood. Standard B has been met.*** The motion was seconded by Mr. Beard. Mr. McCoy asked for clarification that it only applied to the Heavy Commercial Zoning District (B2). Mr. Kessler concurred with his statement. Chairman Nelson called for a vote on the motion. ***The motion passed 4-0-0.***

Standard C

Mr. Kessler made the motion that: ***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.*** It was seconded by Mr. Beard. In discussion, the Board discussed potential increased traffic. Mr. McCoy proposed it was a traffic issue. He said the ZBA is talking only about Spring Street. The Board is considering the number of residents, current resident traffic and not the others that use it. The ZBA is looking at 64 more cars to an area that currently has 12. I don't know why one would say there is no impact on it. Newport officials that were questioned did not give traffic numbers for Spring Street. The Board has testimony from residents about the nature of the traffic flow. Mr. McCoy negated the traffic studies that were submitted to the Board.

Mr. Kessler addressed Mr. McCoy and asked him what he considered impact. Mr. McCoy stated the additional number of cars traveling on the road. Mr. Kessler asked what his quantitative number for an impact was. Mr. McCoy referred to references in letters submitted which did not give definite numbers, only opinions.

Mr. Kessler stated he had traffic numbers of other (small, quiet) residential streets in Newport. He listed the numbers traveled on School Street and Cheney Street. Mr. McCoy stated the numbers had nothing to do with the present case, Mr. Kessler stated they were also residential streets. There was a discussion between the two Board members as to what creates and is considered an impact on a residential street.

Zoning Administrator Donovan stated that the Town lawyer explained that on this specific question of Standard C should be compared to what would be looked at for a traffic impact of what is already approved in B2. Then Board members did not have to come up with ideas "out of the air". Mr. McCoy negated Zoning Administrator Donovan's explanation. Zoning Administrator Donovan reiterated that the Town lawyer specifically stated that the Zoning Board members had to look to the B2 Zoning District and what is approved there to give you a better judge in voting. Example: if it would be more than a hotel, less than a hotel (on the property). Mr. McCoy stated he had a difficult time using those metrics (to answer Standard C). Mr. Beard explained it again for Mr. McCoy.

Zoning Administrator Donovan stated they had discussed Mr. McCoy's concerns about traffic and the Town lawyer had said to "keep it clean". Zoning Administrator Donovan agreed with Mr. McCoy that the ZBA had to consider traffic, but (with this case) they could only consider traffic in the B2 Zoning District.

Mr. Beard again tried to explain the Standard C to Mr. McCoy using different scenarios.

Chairman Nelson told Mr. McCoy that he understood his opinion, but the Zoning Ordinance directive was clear: Chairman Nelson read aloud from page III-24 from the NH Zoning Board of Adjustment Handbook, NH Office of Strategic Initiatives NH Handbook for Local Officials.

Mr. McCoy expressed his opinion as to the meaning of the wording. Zoning Administrator Donovan told him the Special Exception was to make sure they (applicant) follows the Ordinance within the B2 Zoning District. There was further discussion by the Chair and Board members on the streets, the zoning and letters submitted concerning traffic.

Chairman Nelson stated that intersections and through traffic for Spring Street and Elm Street needs to be considered in the future, with one exit off of Spring Street onto Elm Street. Chairman Nelson said he would like to make a recommendation concerning through traffic and creating only one exit off of Spring Street onto Elm Street.

There being no further discussion, Chairman Nelson called for a roll call vote.

The motion passed 3-1-0 (McCoy voted no).

Chairman Nelson asked for a motion on a collective Standard A, B and C for Case #1090. Mr. Kessler made a motion ***to approve the Special Exception for Case #1090 with the following recommendations to the Planning Board:***

- 1) Buffers along Spring Street***
- 2) Sidewalks***
- 3) Traffic on Spring Street***
- 4) To encourage a path to the Newport Plaza***

It was seconded by Mr. McCoy.

Chairman Nelson asked that the following amendment be added. Mr. Kessler (motioner) agreed to its addition.

And to send a letter with the following recommendation to the Selectboard:

- 1) The BOS address through traffic on Elm Street and create one Spring Street exit with a right angle turn onto Elm Street (not have two entrances/exits from Elm Street to Spring Street).***

Chairman Nelson called for a roll call vote. ***The motion passed 4-0-0.***

Chairman Nelson addressed the public and stated he believed the ZBA had put in all the protections they could.

On a motion by Mr. Kessler, seconded by Mr. Beard; ***the Board voted to adjourn at 8:08 p.m. The motion passed 4-0-0.***

Respectfully submitted,

Maura Stetson
Scribe

Approved August XX, 2020