

**Town of Newport**  
**Zoning Board of Adjustment**  
**July 21, 2022 6:30 PM**  
**Board of Selectmen's Room/Municipal Building**  
**15 Sunapee Street/Newport, NH**

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**PRESENT BOS ROOM:** Ben Nelson, Chairman; Tim Beard, Vice Chairman; Bert Spaulding, Sr.; Chris Whalen; Herbert Teller, BOS Representative Alternate

**ABSENT MEMBERS:** Jeffrey Kessler, BOS Representative

**VIDEOGRAPHER:** NCTV

**STAFF PRESENT:** none

**CALL TO ORDER:** Chairman Nelson called the meeting to order at 6:33 p.m. followed by a roll call of members present.

**ADMINISTRATION:**

Case #1132- Requested to be heard first.

Mr. Spaulding, Sr. addressed the applicant for Case #1132 and asked if he would like him to sit on the case. He explained the Winslow versus Holderness court case concerning conflict of interest. Mr. Campbell asked that Mr. Spaulding, Sr. not sit on his case (Case #1132)

On a motion by Mr. Beard, seconded by Mr. Teller; ***the Board voted to hear Case #1132 first. The motion passed 4-0-0.***

Chairman Nelson stated that Mr. Spaulding, Sr. was a member of the Board and was recusing himself from the case.

**CONTINUED BUSINESS:**

**Case #1132: White Mountain Properties, LLC (Owner):** Request a Variance as provided in Article II, Section 208.3 to permit a multi-unit structure with less than the required lot area. The property is identified as Map 111 Lot 232 and is located on Sunapee Street in the General Residential (R2) Zoning District.

Chairman Nelson opened Case #1132.

Mr. Doug Campbell addressed the Board and stated he was returning to the ZBA with requested information from his first meeting (June 16, 2022). The Board had asked that he provide more information to substantiate his request.

(From June 16, 2022: He (Mr. Kessler) read aloud the ordinance which stated the lot should be 32,000 sq. ft. Lot 232 is only 17,000 sq. ft. Chairman Nelson asked the applicant for the following information:

- 1) Drawing of the building (to scale)
- 2) How it will be situated on the property
- 3) Where the parking will be
- 4) Where the ingress and egress will be
- 5) The recorded deed

Mr. Beard said the Right of Way part was important to him because of the Sunapee Street ingress and egress. Going to Columbus Circle would be a lot safer.)

Mr. Campbell stated that the way the Ordinance is written he could construct a 4 family unit on the lot. With a two story apartment building it breaks the density requirements. He is requesting a variance to be able to build an eight unit apartment building. Mr. Campbell told the Board if he could not build the

number of units requested he would not be able to build it economically. He stated that at the June meeting the Board had requested him to return with two things:

- 1) A drawing showing the setbacks and what it would potentially look like
- 2) To show (because of its location) how the deeds are written. Abutting lot 118 has an easement.

The request was to bring both deeds

His request was for the Board to grant him a variance. He asked for any questions.

Chairman Nelson asked if there were questions from the Board.

Mr. Spaulding, Sr. asked if Mr. Campbell had presented his case and now it was open to the public.

Chairman Nelson addressed Mr. Spaulding, Sr. and stated first there would be questions from the Board.

Chairman Nelson again asked for questions from the Board. Chairman Nelson asked Mr. Campbell to indicate Columbus Circle on his hand drawn map. Mr. Campbell pointed it out for him and showed the Right of Way. Chairman Nelson asked him to explain other parts of the hand drawn map. Chairman Nelson asked if anyone wanted a better drawing. Mr. Campbell continued to explain the map, stating that with the final survey it (building) might shift a bit, but the setbacks would be met. He stated that the Ordinance affects the density which he is asking a variance for. Chairman Nelson opened the hearing to the public.

Mr. Spaulding, Sr. said that he could not understand the drawing from his seat. He asked Mr. Campbell to review it; asking for the location of 11/103 (Sunapee St.). Mr. Campbell pointed out Sunapee Street, Columbus Circle and the Right of Way from the lot to Columbus Circle. He also pointed out the lot, proposed building and parking areas.

Mr. Spaulding, Sr. told the Board that going from the lot to Columbus Circle (via Right of Way) was an asset. He asked if the parking spaces would stay at 10' x 20'. Chairman Nelson said that was what he represented (on his drawing). Chairman Nelson explained to Mr. Campbell that the ZBA tried to have everyone talk to the Board (ZBA format). Mr. Spaulding, Sr. stated for clarification that the variance before the ZBA was for smaller parking spaces. It was explained that Mr. Campbell was fine (size and number), it was the second case that had incorrect dimensions.

In discussion, Chairman Nelson said it would be helpful to have last month's maps.

*The recording secretary brought Chairman Nelson her copy of the June 16, 2022 packet w/maps.*

Chairman Nelson read aloud what was being asked for from the June 16, 2022 packet. There was further discussion on the variance and building size on the lot. Mr. Spaulding, Sr. stated there are grandfathered buildings, and there is new construction. Continuing, Mr. Spaulding, Sr. said that he would think that Mr. Campbell using Columbus Circle instead of Sunapee Street as an egress/ingress would give him "brownie points" in the Board's decision.

Chairman Nelson asked the applicant if he had a concept of the number of one bedroom and two bedrooms units. He was told those details were forthcoming. It would depend on financing; construction costs are very high now. There would have to be some two bedroom units.

Chairman Nelson again opened the hearing to the public. There were no comments or questions.

Chairman Nelson asked for questions from the Board. Mr. Whalen asked if each unit was 800 sq. ft. Mr. Tellor asked about the number of required parking spaces. He was told it was two per unit (drawn plan showed 16 parking spaces).

There was a general discussion on the number of units, size of building and lack of abutters at the meeting. Mr. Tellor asked where the Right of Way would come out onto Columbus Circle. Mr. Campbell told him.

Chairman Nelson opened the hearing again to the public.

Mr. Spaulding, Sr. asked if the plan complies with all zoning ordinances for the lot. Chairman Nelson told him that from the information given at the June 16, 2022 meeting, it did. Mr. Beard said that the only issue was the lot size.

Mr. Spaulding, Sr. stated that if the ZBA motion cemented the Right of Way to where it ought to be; that would be the thing to do. There was a discussion on where the entrance onto Columbus Circle would be. The Board concurred that they wanted the driveway to come off Columbus Circle.

Mr. Beard made a motion *to go into Deliberations*. It was seconded by Mr. Tellor. ***The motion passed 4-0-0.***

Procedure for reading, motioning and voting on the prongs was stated. *The recording secretary reminded the Chair that each prong was motioned and voted on individually, unlike other types of ZBA hearings.*

Chairman Nelson read aloud prongs one through five and asked for a motion on each.

**Variance Statement of Reasons and Discussion**

Mr. Whalen made a motion that: *Granting the Variance would not be contrary to the public interest because it provides more housing for the Town of Newport.* It was seconded by Mr. Tellor. Chairman Nelson called for a vote. ***The motion passed 4-0-0.***

Mr. Beard made a motion that: *The spirit of the ordinance would be observed because he can technically build what he wants (one story home instead of two) which would give up four units. The applicant is not changing the square footage (footprint) of the building.* It was seconded by Mr. Whalen. Chairman Nelson called for a vote. ***The motion passed 4-0-0.***

Mr. Beard made a motion that: *Granting the Variance would do substantial justice because it will increase the amount of housing more efficiently.* It was seconded by Mr. Whalen. Chairman Nelson called for discussion. There was no discussion. Chairman Nelson called for a vote. ***The motion passed 4-0-0.***

Mr. Whalen made a motion that: *The values of the surrounding properties would not be diminished because the owner is improving the property; there was no abutter objection.* It was seconded by Mr. Beard. Chairman Nelson called for a vote. ***The motion passed 4-0-0.***

**Unnecessary hardship**

*Chairman Nelson stated he did not have a second page with the 5<sup>th</sup> prong. The recording secretary approached the Board table and gave him her copy of the 5 prongs to use.*

Mr. Whalen made a motion: Owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because:

***A.i. There is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because he is not exceeding the square footage footprint of the building versus the square footage of the property.***

**AND:**

***A.ii. that the proposed use is a reasonable one because it will provide additional housing.***

It was seconded by Mr. Tellor. There was no discussion. Chairman Nelson called for a vote. ***The motion passed 4-0-0.***

Chairman Nelson called for a motion to memorialize the decision of the ZBA to grant the Variance. Mr. Beard made a motion that ***the Board grant the Variance for Case #1132 White Mountain Properties with the condition that the driveway come out on Columbus Circle via the Right of Way.*** It was seconded by Mr. Whalen. Chairman Nelson called for a vote. ***The motion passed 4-0-0.***

Mr. Beard stated the Notice of Decision will be ready for Mr. Campbell.....*the recording secretary provided* "in five business days".

#### **NEW BUSINESS:**

**Case # 1133: David Milne (Owner) Avanru Development (Agent):** Request a Variance as provided in Article IV, Section 409.9 to permit parking spaces with less than the required 10' x 20' dimensions. The property is identified as Map 116 Lot 076 and is located on Spring Street in the Heavy Commercial (B2) Zoning District.

Mr. Tellor addressed the Chairman and stated he could not sit on the case. It has already gone through the Planning Board (he sat for it there). It was up to Mr. Franks whether he could sit or not. Mr. Franks said he would be fine with Mr. Tellor sitting. Chairman Nelson checked with Mr. Spaulding, Sr. as to whether he would sit on the Case. In discussion by the Board on the Case and conflicts, Mr. Spaulding, Sr. and Mr. Tellor recused themselves from Case #1133.

Chairman Nelson addressed Mr. Franks and stated there were only three sitting Board members for his case. All three members would have to be in agreement for the Variance to pass; he could choose to continue his case until a quorum of four was present.

Mr. Jack Franks, Avanru Development considered this information. Mr. Franks asked if there would be a different Board member at the August meeting to make four members. He was told yes, Mr. Kessler. Chairman Nelson explained that next month with a vote of 3-1-0 his variance would pass; this month it would have to be 3-0-0.

Mr. Jack Franks, Avanru Development considered this information with Chairman Nelson. Chairman Nelson stated that the dimensions of the parking spaces had been questioned several times at last month's meeting. Mr. Franks and his engineer had said they had been made to comply with the Newport Town Ordinance.

Mr. Franks stated that after the June 16, 2022 meeting he had looked on the site plan for the parking spaces dimensions. Instead of 10' x 20' it stated 9' x 18'. After further discussion, Mr. Franks asked if the Board would like to hear his case (July 21, 2022). They agreed to hear it with three members.

Mr. Franks introduced himself and stated he was at the ZBA for a variance for a noncompliant dimension for parking spaces. The original plan stated 9' x 18' and had been approved by the ZBA and Planning Board. There was a discussion on the site plan. Chairman Nelson acknowledged Mr. Spaulding, Sr.

Mr. Spaulding, Sr. asked if the Planning Board approved the applicants' site plan and whether the Planning Board member's signatures were on the Mylar. If the parking spaces had been delineated as 9' x 18' and it had not been caught by either the Planning or Zoning Board and the Mylar had been signed and recorded, Mr. Franks was in the clear. There was discussion on the plan, and whether a signed and recorded Mylar has been done. Mr. Franks stated that he did not have a signed site plan; everything was in the Zoning Office. Addressing Chairman Nelson, Mr. Spaulding, Sr. stated the Board might continue the case until a signed Mylar can be shown. If the ZBA and Planning Board approved a (site) plan with the incorrect dimensions, the applicant is fine. Chairman Nelson stated that he had read the minutes a few

times; both Mr. Kessler and Mr. Spaulding, Sr. had questioned the dimensions. He told Mr. Franks it did not state he had insisted it was 10' x 20'; rather what the ordinance was.

Chairman Nelson acknowledged Mrs. Karen Arleo, abutter for Case #1133.

Mrs. Arleo asked if the approved parking spaces were 9' x 18'. She was told yes.

She asked if the applicant would make them smaller. She was told no.

For clarification, Mrs. Arleo said the applicant will stay with 9' x 18' parking spaces. She was told yes.

Mrs. Arleo asked if they were required to have handicapped spots. She was told yes.

Mrs. Arleo asked for the dimensions of those spots. Mr. Franks said they were ADA compliant handicap spots.

When asked by Mr. Whalen, Chairman Nelson stated the discussion was to determine whether to open the case or not. It has been stated the ZBA and Planning Board have approved the original plan with parking space dimensions of 9' x 18'. Mr. Whalen asked that the ZBA open the case and vote on the 9' x 18' dimensions one way or the other.

In further discussion, Chairman Nelson said that the applicant had been granted a variance. Mr. Spaulding, Sr. said the ZBA and Planning Board both missed the incorrect dimensions. Mr. Teller said the safe way would be to continue. There was a discussion among the Board members and Mr. Franks on different aspects of the site plan.

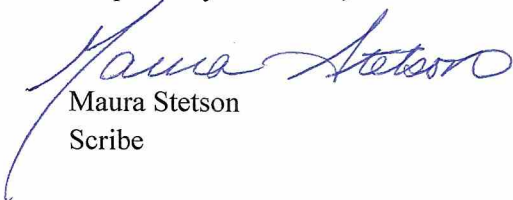
Mr. Franks asked what the pleasure of the Board was.

Chairman Nelson asked if there were any objections to releasing the case. Mr. Whalen had no objections. Mr. Spaulding, Sr. said they could wait until there was a legal opinion on the case. Chairman Nelson said he and Mr. Whalen had gone around town checking dimensions of various parking spaces. There were a lot of parking spaces that were not 10' x 20' compliant. Mr. Whalen asked if they had to open the case and vote on it. After a lengthy discussion, the Board members concurred the case did not need to be heard.

Chairman Nelson called for a motion to adjourn.

On a motion by Mr. Whalen, seconded by Mr. Beard; ***the Board voted to adjourn at 7:40 p.m. The motion passed 3-0-0 (Spaulding and Teller were recused).***

Respectfully submitted,



Maura Stetson

Scribe

Approved on: August 25, 2022

The next meeting of the ZBA will be on August 25, 2022 at 6:30 pm in the Board of Selectmen Room.