

**Town of Newport
Zoning Board of Adjustment
May 19, 2022 6:30 PM
Board of Selectmen's Room/Municipal Building
15 Sunapee Street/Newport, NH**

PRESENT BOS ROOM: Chris Whalen, Bert Spaulding, Sr.; Jeffrey Kessler, BOS Representative

ABSENT MEMBERS: Scott McCoy, alternate; Ben Nelson, Chairman; Tim Beard, Vice Chairman

VIDEOGRAPHER: Alex Zander and John Lunn, NCTV

STAFF PRESENT: Christina Donovan, Planning and Zoning Administrator

COMMUNITY MEMBERS PRESENT: Karen Arleo

Due to the absence of the Chair and Vice Chair, Mr. Kessler acted as Acting Chair for the meeting.

CALL TO ORDER: Acting Chairman Kessler called the meeting to order at 6:30 p.m. followed by a roll call of members present.

ADMINISTRATION:

- Grandfather Status/Rights

Ms. Donovan addressed Acting Chairman Kessler and asked that the agenda item be moved to after the cases.

MINUTES: April 21, 2022

April 21, 2022

Mr. Spaulding, Sr. made a motion *to approve the minutes of the April 21, 2022 meeting as presented.* It was seconded by Mr. Whalen. *The motion passed 3-0-0.*

NEW BUSINESS:

Case #1129: WATERSTONE SUGAR RIVER, One Credit Union: Request a Variance as provided in Article IV, Section 411 to permit external lighting that increases the intensity and glare exposure. The property is identified as Map 117 Lot 055 and is located at 70 John Stark Highway in the Heavy Commercial (B2) Zoning District.

Acting Chairman Kessler opened Case #1129. He acknowledged the applicant.

Mr. Brett Smith, President and CEO of One Credit Union addressed Chairman Kessler and stated he was at the meeting due to a letter from the Town legal counsel which stated One Credit Union had a problem that needed to be resolved. He was in attendance to try and resolve the issue. One Credit Union has some sconce lights on the side of their building. They were not the lights that had been submitted at site plan review (to the Planning Board) when they initially sought approval for their project. The lights that were mounted on the walls were not downcast, but they met all the parameters of the (Newport) Zoning Code. Due to that they believed they were okay (in compliance) with the (style) change. They have been told they were not. One Credit Union is seeking a variance; the lights have been dimmed more than is required by zoning and the light does not spill off of the property. By granting the variance, One Credit Union will not have to remove the current lighting.

Acting Chairman Kessler addressed Ms. Donovan and asked if lighting is a Planning Board requirement. She stated yes; "Sharp downcast lighting, no spillage off the property". Ms. Donovan then explained to the Zoning Board the initial site plan hearing, the nonconforming (to the site plan) lighting that the contractor had replaced the approved design with. There had been complaints by residents about the lighting which triggered years of communication with One Credit Union representatives. A representative from One Credit Union was supposed to go before the Planning Board in 2021, he never showed. Finally

Town legal counsel became involved and has required One Credit Union to go before both the Zoning Board of Adjustment and the Planning Board.

Acting Chairman Kessler stated the original request did not go to ZBA; it is a permitted use. The ZBA never talked about lighting (Case #1129). Lighting is the purview of Planning Board. Ms. Donovan agreed. If Mr. Smith received a variance from ZBA, he would still need to go to Planning Board to get a change to his site plan that was originally presented. It was legal counsel that stated he would have to go to ZBA for a variance and then Planning Board for approval.

Acting Chairman Kessler stated Ms. Donovan needed to show him where (in the Zoning Ordinance) ZBA had the authority to grant a variance for something that does not require one.

Mr. Spaulding, Sr. stated he would not be able to participate or vote on Case #1129. He explained the conflict of interest.

There was a lengthy discussion concerning the process that One Credit Union needs to take to resolve the issue. Acting Chairman Kessler stated the Zoning Board does not handle lighting aspects of projects; it is the purview of the Planning Board. The ZBA could not grant a variance.

Acting Chairman Kessler and Mr. Whalen asked basic questions of the lighting on and around the building. Mr. Smith answered all their questions.

There was additional discussion on Case #1129. Acting Chairman Kessler repeated that Case #1129 was out of the ZBA purview. It is a Planning Board requirement and needed to be dealt with at Planning Board. He did not know why Town legal counsel had the applicant come to ZBA. He believed it needed to be sent to the Planning Board.

The applicant would go to the Planning Board on June 14, 2022. Depending upon their decision, the applicant would return to the Zoning Board of Adjustment on September 15, 2022. Ms. Donovan would look into the need for the applicant to return to the ZBA.

On a motion by Mr. Whalen, seconded by Chairman Kessler; ***the Board voted to continue Case #1129 to the September 15, 2022 ZBA meeting at 6:30 pm in the Board of Selectmen Room. The motion passed 2-0-1 (Spaulding abstained).***

Case # 1130: David Milne (Owner) Avanru Development (Agent): Request a Variance as provided in Article IV, Section 409 to permit a multi-unit structure with less than the required two parking spaces per dwelling. The property is identified as Map 116 Lot 076 and is located on Spring Street in the Heavy Commercial (B2) Zoning District.

Acting Chairman Kessler opened Case #1130.

Ms. Darrow, P.E., presenter for the applicant addressed the Board and asked, for clarification, if there was a voting quorum for Case #1130. Mr. Spaulding, Sr. explained he would not be able to vote on Case #1130. The applicant's lawyer had instructed him to recuse himself at a previous hearing on the case. Therefore, there would not be a voting quorum when hearing the case on May 19, 2022.

She repeated her question, stating if there was not a voting quorum, perhaps they should have a continuation of the Case. Mr. Jack Franks, applicant, formally asked for a continuance.

Ms. Donovan stated they could be heard at the next meeting of the Zoning Board, June 16, 2022. After explaining hardships created by construction and now the ZBA deferral, Mr. Franks and Ms. Darrow agreed to the continuation date.

Mr. Spaulding, Sr. explained to Ms. Donovan that he would not be able to vote on Case #1130. The applicant's lawyer had instructed him to recuse himself at a previous hearing on the case.

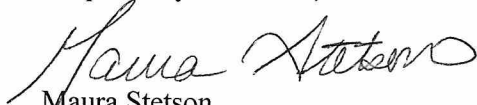
On a motion by Mr. Whalen, seconded by Chairman Kessler; *the Board voted to continue Case #1130 to the next ZBA meeting; June 16, 2022 at 6:30 pm in the Board of Selectmen Room. The motion passed 2-0-1 (Spaulding abstained).*

Chairman Kessler apologized to the applicants and stated they would hear their case in June.

CONTINUED BUSINESS: none

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Maura Stetson", with a long horizontal line extending from the left side of the signature.

Maura Stetson

Scribe

Approved on: June 16, 2022

The next meeting of the ZBA will be on June 16, 2022 at 6:30 pm in the Board of Selectmen Room.