

Zoning Board of Adjustment
July 27, 2017 6:30 PM
Board of Selectmen's Room/Municipal Building
15 Sunapee Street/Newport, NH

PRESENT: Ben Nelson, Chairman; Melissa Saccento, Vice Chairman; Jeffrey Kessler, BOS Representative; Beth Cassorla, David Lain

ABSENT MEMBERS: Tim Beard, Alternate; Virginia Irwin, Alternate; Scott McCoy, Alternate

VIDEOGRAPHER: Louis Cassorla, NCTV

STAFF PRESENT: Julie M. Magnuson, Planning & Zoning Administrator

COMMUNITY MEMBERS PRESENT: Mary and Reginald Dodge, Jr.

CALL TO ORDER: Chairman Nelson called the meeting of the ZBA to order at 6:30 p.m. and introduced the sitting Board members.

ADMINISTRATION: Election of Officers

Ms. Magnuson informed the ZBA members that the Election of new Officers was required at the July 27, 2017 meeting. A new Chairman and Vice Chairman for July 2017-June 2018 needed to be elected. Mrs. Beth Cassorla made a motion *to elect Ms. Melissa Saccento as Chairperson and Mr. David Lain as Vice Chairman*. It was seconded by Mr. Ben Nelson. *The motion passed 5-0-0.*

Chairman Saccento took over the meeting.

MINUTES: May 25, 2017

May 25, 2017

On a motion by Mr. Kessler; seconded by Mrs. Cassorla; *the Board voted to approve the minutes of the May 25, 2017 meeting as presented. The motion passed 5-0-0.*

Chairman Saccento read and explained the ZBA format to applicants and abutters present.

NEW BUSINESS

Case #1049: Jemarel Prop. Realty Trust, Maryann Branin, Trustee (Owners) and David M. Spydell (Agent) request a Special Exception for Mixed Use as provided for in Article IV, Section 402 of the Zoning Ordinance to permit locating a seasonal concession trailer as well as existing motel use. The property is identified as Map 103 Lot 052 and located at 467 Sunapee Street in the Industrial (I) Zoning District.

Chairman Saccento opened the hearing. She then acknowledged Ms. Magnuson. Ms. Magnuson read her Administrative review into the record. She listed the items the Board members had received in their packets.

Chairman Saccento acknowledged the applicant for Case #1049.

Mr. David Spydell read his application into the record. Addressing the Board he stated he had a concession trailer which was certified by the State of NH and met all regulations. He had been in the food industry business for forty plus (40+) years. The proposed property is zoned Industrial (I) but has a

commercial exemption on it because of the Motel. He was asking to keep the current exemption (commercial) to have a food trailer on the property. It would be seasonal because it was a mobile unit.

Chairman Saccento asked Mr. Spydell if he had been in contact with the Department of Food Safety. She was told yes. The food trailer was already certified to operate in the State of NH; he had a copy of his provisional certificate with him. He explained all the other licenses and inspections required to run the food trailer.

Chairman Saccento addressed the Board and asked for questions.

Mrs. Cassorla asked Mr. Spydell about parking. There were spaces for the motel; she asked if there were designated spaces for the food trailer. She was told there was adequate space for parking.

Mrs. Cassorla rephrased her question. She asked Mr. Spydell if the parking area would be clearly delineated or a “free for all”. Mr. Spydell stated the food trailer parking area would be opposite the motel parking area.

Using a photo, Mr. Spydell showed the Board, abutters and viewing public where the potential parking area would be. There was a short discussion on the location of the trailer and the customer cars.

Chairman Saccento asked Mr. Spydell about signage. He stated there would be signs on the trailer, and a small sandwich board sign near the road. Ms. Magnuson addressed the Board and Mr. Spydell and stated that all signage would be according to Town regulations.

There were no other questions from the Board.

Chairman Saccento asked if there was an abutter present who would like to speak.

Mr. Reginald Dodge, Jr. abutter addressed the Chair and Board with his concerns. They were:

- Seasonal use-what is the calendar timeframe the food trailer would be open
- Lighting
- Generator?
- Music; noise control
- Trailer fixed or daily transport
- No mention of picnic tables for customers, trash receptacles

Mr. Dodge listed the things already in the area (i.e. swimming pool, etc.) and stated the area was well kept and landscaped.

Concerning the application he stated:

- ❖ Nowhere in application does the applicant state that the service would be from a truck.
- ❖ Application states that the speed limit is 35 MPH. It is 30 MPH.
- ❖ Parking. Mr. Dodge said parking lot often filled with motel parking (customers).
- ❖ Traffic used proposed food concession area
- ❖ Water disposal
- ❖ Providing porta potties

Mr. Dodge stated they had “lost Guild as a neighborhood”.

Chairman Saccento thanked Mr. Dodge for his comments. Mrs. Mary Dodge, abutter, spoke to the Chair.

Mrs. Dodge stated it was a dangerous area to drive. There were trailer trucks and increased traffic in the proposed area.

Chairman Saccento asked the Board if they had questions. There being none, she asked the applicant if he had a rebuttal to Mr. and Mrs. Dodge's concerns.

Mr. Spydell stated:

- There was plenty of access into the property.
- He had no control over the traffic-it was a state highway
- There is no waste water; he will be trucking the grey water out daily
- As far as the other concerns, they were out of Mr. Spydell's realm

Mrs. Cassorla asked, for clarification, if food trucks required restrooms. She was told no.

Mr. Spydell also stated

- There would be no picnic tables
- There would be a trash can and recycling bin for soda cans and bottles (they would be removed daily)

Mrs. Cassorla asked what Mr. Spydell considered seasonal. He had not solidified the calendar dates. Mr. Spydell stated potentially spring/summer/fall. There was a general discussion between the Board members and Mr. Spydell on dates.

- Days of operation would be Monday-Friday
- Hours of operation would be 6 AM- 3 PM

Mr. Nelson asked if he had a generator. Mr. Spydell stated yes. He then stated that if the food trailer (business) went well he would look into tying into the electrical lines along the road (cheaper, easier and quieter).

Mr. Lain asked if the vehicle would remain at the site overnight. Mr. Spydell stated that at the beginning he would be hauling it away daily. He was doing the venture on a trial basis; to see if it worked. If he tied into the electricity at the site he wanted to keep the truck there. Regardless it had to meet the mobile standards of the state and be able to be moved at any time.

Ms. Magnuson was acknowledged. She stated that if Mr. Spydell tied into the electrical lines he would need an electrical permit. Also, if the Board made daytime hours a condition, she asked that the Board remember that Sturm Ruger, Co. (with potential customers) has shift changes.

There was a discussion between the Board and Ms. Magnuson concerning other concession operations in town that were similar.

Mr. Nelson addressed Ms. Magnuson and stated the photo in their packets showed the potential site as on the state right of way. He asked what the setback would have to be.

Reading from the current regulations, Ms. Magnuson stated there was no setback in the Industrial Zone.

Board members discussed a potential setback from the road, still in keeping with the line of sight. Concerns were to have visibility from the road for egress and ingress as well as increase the distance from the abutters.

Chairman Saccento asked Ms. Magnuson if there was anything in the Master Plan about the proposed area.

Ms. Magnuson said that the motel owner might have to apply to the State of NH for a permit because the Spydells were altering the use. She explained.

The Board held a general discussion on the driveway parking and the food truck.

In answer to Mr. Nelsons' questions it was stated there would be:

No porta potties

No lighting

No trash overnight

No music

Mrs. Cassorla stated that the decision by the ZBA stays with the land. Therefore, another individual could put a food truck there in the future. She asked if a store selling fireworks would have to go before the ZBA. She was told yes.

Ms. Magnuson stated that whatever conditions the ZBA approved would be able to be there (in the future).

Mrs. Cassorla stated she wanted to make sure the ZBA protected the future use of the property and maintain reasonable restrictions.

There was a general discussion between the Board and Ms. Magnuson. It was confirmed that any approval would "go away" if not used for a calendar year. Examples were given.

Mrs. Spydell asked for clarification of disuse and calendar year. The Board explained

Mr. Nelson stated he sympathized with the Dodges. Mr. Nelson's suggestion would be to move the food trailer back from the road to the end of the motel (for distance from abutters and better line of sight during ingress and egress for customers).

Chairman Saccento asked Mr. Spydell which way the trailer would be facing. She was told facing the road. Ms. Magnuson stated that in other applications the ZBA has made a condition that the customer cars could not park in the state right of way. There was a short discussion on signage to indicate parking.

The Board was told that Town regulations state that fences less than 6 ft. tall can be put up without a permit. The motel owners might allow one to be constructed along the state highway.

Chairman Saccento addressed the abutters present and asked if they had any rebuttal.

Mr. Dodge stated he disagreed and repeated his concerns.

Chairman Saccento addressed the applicant and asked if he would like to follow up. He said no.

Chairman Saccento returned to the Board and asked if they had follow up questions.

Mr. Lain asked for the size and decibels of the generator. He was told it was 42 decibels. Mr. Spydell said he researched and bought the quietest one he could find. He was going to be on site all day long; he wanted it quiet.

Mr. Lain asked if he had researched hooking up to electrical power. He said yes, but it would be one more expense. As a seasonal business he did not have the answer to it (cost).

Mr. Dodge asked to speak. Chairman Saccento agreed to comments pertaining directly to the case. Mr. Dodge began to speak to the electricity for the potential use by the applicant. Ms. Magnuson addressed Chairman Saccento and stated that the ZBA should be concentrating on the permitted uses in the Industrial Zone. She read them from the Town Regulations.

There was discussion between the Board members and Mr. Dodge on potentially increased noise. Mr. Nelson stated that if it was loud and waking clients, the motel owners would complain. Mr. Spydell said he had done a trial run (running the generator) with the motel owner and she had not had a problem with the small amount of noise it made. He was being diligent.

Mr. Spydell stated there were only lights inside the food trailer.

On a motion by Mrs. Cassorla, seconded by Mr. Kessler; the Board voted to go into Deliberations. The motion passed 5-0-0.

Zoning Board of Adjustment Special Exceptions-Mixed Use

Chairman Saccento ensured that all ZBA members had the Special Exception-Mixed Use worksheet.

She then asked for a motion on Standard A. A motion was made by Mr. Kessler, seconded by Mr. Nelson; that the selected site is an appropriate location for the proposed use because there is adequate parking and line of sight on the roadway. Mr. Nelson stated it was a light use for the Industrial Zone. Other food trucks had been on the road. Standard A has been met. ***The motion passed 5-0-0.***

Ms. Magnuson stated as a Point of Order, that the ZBA members did not have to vote on each standard, they could discuss each and then vote on the overall Special Exception-Mixed Use.

Standard B. A motion was made by Mr. Nelson, seconded by Mrs. Cassorla; that adequate and safe highway access is provided to the proposed use. Mr. Nelson stated with the provision that the trailer be setback from the road in line with the end of the motel. Standard B has been met.

Ms. Magnuson reminded the ZBA that when they approved the ice cream concession it had to be behind a fence. When they approved the concession at Lake Sunapee Heating it needed to go behind the fence. Historically the ZBA has stated concessions needed to go behind a fence to encourage people to not park on the highway.

There was a discussion among the ZBA whether to have a fence as a condition. Chairman Saccento called for a vote on Standard B. ***The motion passed 5-0-0.***

Chairman Saccento asked for a motion on Standard C.

On a motion by Mr. Kessler, seconded by Mr. Lain; that adequate method of sewage disposal is available at the proposed site because Mr. Spydell would be hauling away the grey water. State regulations require stating what will be done with the grey water and Mr. Spydell will comply with state food truck regulations. ***The motion passed 5-0-0.***

Standard D.

On a motion by Mrs. Cassorla, seconded by Chairman Saccento; the proposal will not be detrimental, hazardous or injurious to the neighborhood because the proposed use is a milder one compared to those allowed in the Industrial Zone. If the generator was too loud the motel owners would evict him from the site. ***The motion passed 5-0-0.***

Standard E.

Mrs. Cassorla made the motion that the proposed use is consistent with the spirit of the Ordinance and the intent of the Master Plan because it is a new business opportunity in Newport to make it more viable; Standard E has been met. Mr. Kessler seconded the motion. ***The motion passed 5-0-0.***

Chairman Saccento asked for a motion on a collective standard A, B, C, D and E for Case #1049. On a motion by Mr. Kessler, seconded by Mrs. Cassorla; **the Board voted to approve the request for a Special Exception-Mixed Use for Case #1049 with the following conditions:**

- 1. The trailer will be set back from the road and in line with the end of the motel building.**
- 2. There will be fencing to discourage direct access from the road.**
- 3. No additional exterior lighting.**
- 4. Any state driveway permits (change of use) be obtained if necessary**

The motion passed 5-0-0.

Chairman Saccento addressed the applicant and stated his Special Exception was approved.

Ms. Magnuson addressed Chairman Saccento and stated that she sign the Notice of Decision for case #1049 when it was drafted (within five business days). The applicant would receive the original and she would keep one copy for his case file.

There was a recess of the Zoning Board of Adjustments from 7:55-8:05 p.m.

Case #1050: William B. Ruger, Jr. (Owner) and Heather Rowe (Agent) request a Special Exception for Mixed Use as provided for in Article IV, Section 402 of the Zoning Ordinance to permit a Home Business of a hair salon in a residence. The property is identified as Map 212 Lot 015 and located at 95 Croydon Brook Road in the Rural (R) Zoning District.

Chairman Saccento opened the hearing. She then acknowledged Ms. Magnuson. Ms. Magnuson read her Administrative review into the record.

Ms. Magnuson read Ms. Heather Rowe's application for Case #1050 into the record.

Chairman Saccento addressed the applicant and asked if she had anything to add. She stated no.

Mrs. Cassorla commented that a home business allows for two employees in addition to Ms. Rowe, but she was not going to have any.

Mr. Nelson asked about signage. There was a general discussion on signage for the home business. Ms. Rowe stated the business had been registered with the State of NH for three years as "Hair Addictions". She would have that on a permitted sign along with the house number.

Chairman Saccento asked the proposed hours. She was told 7 a.m. to 7 p.m. in order to accommodate clients schedules. Days of operation would be Monday, Thursday, Friday and Sunday.

Ms. Magnuson addressed the Board and stated that Mr. Bill Ruger, Jr. was in support of the venture.

Mrs. Cassorla asked how many chairs there would be. Ms. Rowe stated one.

There being no further questions, Chairman Saccento called for a vote to enter into Deliberations. ***The Board voted 5-0-0.***

Zoning Board of Adjustment Special Exceptions-Mixed Use

She then asked for a motion on Section A. A motion was made by Mr. Kessler, seconded by Chairman Saccento that the selected site is an appropriate location for the proposed use because it is a home business similar to those they had approved before. Standard A has been met. ***The motion passed 5-0-0.***

Standard B.

A motion was made by Mrs. Cassorla, seconded by Mr. Nelson; that adequate and safe highway access is provided to the proposed site and that there is adequate off-street parking provided for the proposed use because there was a wide driveway and only 1 customer would be served at a time. Standard B has been met. ***The motion passed 5-0-0.***

Standard C.

A motion was made by Mr. Kessler, seconded by Mrs. Cassorla; that adequate method of sewage disposal is available at the proposed site because there would not be a large amount for the household system and it has been handled by other people who do this in their home. Standard C has been met. ***The motion passed 5-0-0.***

Standard D.

On a motion by Mrs. Cassorla, seconded by Mr. Kessler; the proposal will not be detrimental, hazardous or injurious to the neighborhood because it was in the Rural (R) Zoning District, there were not many people around and work is done indoors. Standard D has been met. ***The motion passed 5-0-0.***

Standard E.

Mr. Kessler made a motion that the proposed use is consistent with the spirit of the Ordinance and the intent of the Master Plan because the Master Plan encourages home businesses. Mrs. Cassorla seconded the motion. Standard E has been met. ***The motion passed 5-0-0.***

Chairman Saccento asked for a motion on a collective standard A, B, C, D and E for Case #1050. She stated there were no conditions being requested for the Special Exception-Mixed Use. On a motion by Mrs. Cassorla, seconded by Mr. Kessler; ***the Board approved Case #1050: William B. Ruger, Jr. (Owner) and Heather Rowe (Agent) of a Special Exception for Mixed Use for a Home hair salon. The motion passed 5-0-0.***

Ms. Magnuson addressed Chairman Saccento and requested that she sign the Notice of Decision for case #1050. The applicant would receive the original and she would keep one copy for her case file. Ms. Magnuson presented Ms. Heather Rowe with the Notice of Decision. Ms. Rowe thanked her and the ZBA.

Case#1051: United Construction Corp. (Owner) and George Newirt (Agent) request a Special Exception for Mixed Use as provided for in Article IV, Section 402 of the Zoning Ordinance to permit an automobile & truck service station, sales, repair, storage and rental equipment business as well as the other existing businesses. The property is identified as Map 227 Lot 011 and located at 250 North Main Street in the Heavy Commercial (B-2) Zoning District.

Chairman Saccento opened the hearing. She then acknowledged Ms. Magnuson. Ms. Magnuson read her Administrative Review into the record. She stated that the State of NH has identified the property as an Economic Recovery Zone (ERZ). It would like to see the property used by a business.

Mr. George Newirt explained his business, Trusted Rentals, and its growth and expansion into other facets of rental equipment.

He had applied to the state to become an inspection station for motorcycles and heavy trucks. He was told that he had to come before the ZBA in order to become an inspection station.

Mr. Newirt read his application for Case #1051 into the record.

Mr. Nelson asked if the rental equipment in the complex was his. Mr. Newirt said yes.

Mr. Nelson asked Mr. Newirt to explain the complex layout.

Using photos, Mr. Newirt described his business and its layout at the United Construction complex. He stated that he had 7-8 designated parking spaces for his business.

Mr. Newirt briefly told the ZBA of a potential expansion to his business in the future.

Using the photos he also showed the delineation between the United Construction business area and his business within the complex as well as egress and ingress.

Ms. Magnuson described the ease of driving in the Mixed Use area on one of her site visits.

Mr. Newirt stated for the ZBA members that he owned and used his own grading and snow removal equipment.

On a motion by Mrs. Cassorla, seconded by Mr. Nelson; ***the Board voted to go into Deliberations. The motion passed 5-0-0.***

Zoning Board of Adjustment Special Exceptions-Mixed Use

Standard A.

A motion was made by Mr. Kessler, seconded by Chairman Saccento that the selected site is an appropriate location for the proposed use because it is in the Heavy Commercial Zone. Standard A has been met. ***The motion passed 5-0-0.***

Standard B. A motion was made by Mrs Cassorla, seconded by Mr. Nelson; that adequate and safe highway access is provided to the proposed site and that there is adequate off-street parking provided for the proposed use because there was adequate and safe highway access provided and there is adequate off street parking because of the size of the lot. Standard B has been met. ***The motion passed 5-0-0.***

Standard C.

A motion was made by Mr. Kessler, seconded by Mrs. Cassorla; that adequate method of sewage disposal is available at the proposed site because it was on Town water and sewer. ***The motion passed 5-0-0.***

Standard D.

On a motion by Mrs. Cassorla, seconded by Mr. Lain; the proposal will not be detrimental, hazardous or injurious to the neighborhood because it was in the Heavy Commercial Zone. Standard D has been met. ***The motion passed 5-0-0.***

Standard E.

Mr. Kessler made a motion that the proposed use is consistent with the spirit of the Ordinance and the intent of the Master Plan because it is a proper use and it is in the Economic Recovery Zone (ERZ). Mrs. Cassorla seconded the motion. Standard E has been met. ***The motion passed 5-0-0.***

Standard A, B, C, D and E for Case #1051.

On a motion by Mrs. Cassorla, seconded by Mr. Kessler; ***the Board approved Case#1051: United Construction Corp. (Owner) and George Newirt (Agent) for a Special Exception for Mixed Use as provided for in Article IV, Section 402 of the Zoning Ordinance with the following conditions:***

- 1. All signs be in compliance with local ordinances Article 4 Section 412 Newport Zoning Ordinance***
 - 2. All displays to remain behind the chain link fence on the property along North Main Street***
- The motion passed 5-0-0.***

Chairman Saccento congratulated the applicant.

Chairman Saccento asked Ms. Magnuson if there was further business. She was told no.

On a motion by Mrs. Cassorla, seconded by Mr. Nelson; ***the Board voted to adjourn at 8:35 p.m. The motion passed 5-0-0.***

Respectfully submitted,

Maura Stetson
Scribe

Approved September 28, 2017