

**Zoning Board of Adjustment**  
**April 28, 2016 6:30 PM**  
**Board of Selectmen's Room/Municipal Building**  
**15 Sunapee Street/Newport, NH**

---

**PRESENT:** Ben Nelson, Chairman; Melissa Saccento, Vice Chairman; Beth Cassorla, Scott McCoy, alternate; Jeffrey Kessler, BOS Representative

**ABSENT MEMBERS:** David Lain

**VIDEOGRAPHER:** Louis Cassorla, NCTV

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

**CALL TO ORDER:** Chairman Nelson called the meeting of the ZBA to order at 6:30 p.m. Alternate Scott McCoy was appointed to sit on the Board for Mr. Lain. This was followed by a roll call of the sitting members.

**ADMINISTRATION:** Ms. Magnuson addressed the Board and stated that the newest edition of handbooks for ZBA members were before them. They would replace the 2013 editions the Board currently had. She brought Appendix A to their attention. Ms. Magnuson stated that the current Rules of Procedure had several inaccuracies. She stated that the current ZBA bylaws state the time required for a Notice of Decision to be available to the public was noted in hours instead of days. Also absent was the sitting of alternates at a meeting. She stressed that had to be included in the Rules of Procedure. The new handbooks contained a "boilerplate" Rules of Procedure for Zoning Board of Administrations on page A-1. She encouraged the Board members to review the boilerplate, and tailor it to what would be appropriate for Newport's ZBA needs. Ms. Magnuson suggested the Board members come to the next meeting with a proposed update of the current Rules of Procedure. Because some of the statutes had changed the ZBA needed to have their Rules of Procedure current and accurate; they were a quasi-judicial Board. Reiterating her suggestion she stated that if the ZBA members agreed that they would like to do this as a Board, she would begin by proposing some revisions and then accept recommendations from Board members. Chairman Nelson requested that it be put on the May 2016 agenda.

Ms. Magnuson agreed. She explained that according to the law the ZBA had to discuss changes and vote on them at an open meeting and a copy be made available to the public. The ZBA would vote on them at the following meeting. She explained the procedure that had been taken with the Planning Board.

There was a general discussion on the Rules of Procedure that were to be updated. Ms. Magnuson informed the ZBA members that they were currently working with Rules of Procedure adopted in 1991. She stressed that she had found some discrepancies, but that the Board had to agree to all changes to the current document. The Board members concurred with the need to update the Rules of Procedure. Chairman Nelson called for a motion.

On a motion by Mr. McCoy, seconded by Ms. Saccento; ***the Board voted to review the Rules of Procedure that are in Appendix A of the new handbooks, pick out those relative to Newport and present them at the next meeting for discussion. The motion passed 5-0-0.***

Ms. Magnuson reviewed the procedure to contact her with an individual's request for change within the proposed document.

**MINUTES:** January 28, 2016

On a motion by Mr. Kessler, seconded by Mrs. Cassorla; *the Board voted to approve the minutes of the January 28, 2016 meeting. The motion passed 4-0-1(Nelson abstained).*

**NEW BUSINESS:**

Chairman Nelson addressed the applicants and public in attendance and reviewed and explained the ZBA format. He stated that the proceedings would be more informal due to the cases and absence of participants from the public.

**Case #1036: Kapro Investment, LLC (Owner) and Mark Kanakis (Agent) request a Variance from the terms of Article II, Section 209.1 of the Zoning Ordinance to allow construction of two additional apartments for residential use, creating a 4 unit apartment. The property is identified as Map 111, Lot 010 and is located at 9 Depot Street in the Light Commercial (B-1) and Downtown National Historic Zoning Districts.**

Chairman Nelson opened the hearing and acknowledged Ms. Magnuson. Ms. Magnuson read her Administrative Review into the record. She referenced Article VI-Non-conforming Uses and Non-Complying Buildings (Section 602.2) in the ZBA Handbook, ZBA Case # 835 as well as the 2012 Master Plan and Town Meeting vote in 2004 on parking to assist the ZBA members in their questioning and deliberating.

Chairman Nelson then acknowledged the spokesperson for Case #1036. He reiterated the ZBA format for him.

Mr. Mark Kanakis addressed Chairman Nelson and Board members. He read the application into the record. Using a map of the area, Mr. Kanakis explained his proposal to the Board members. He explained the historical aspect of the building (known most recently as the SAU 43 office), his failed attempts to rent the building to a business and his request to renovate the first floor of the building into two apartments.

Chairman Nelson asked if there were questions from the Board.

Mr. Kessler stated he had comments concerning Mr. Kanakis' presentation.

- ❖ The parking lot at the end of the street was not a public parking lot, it was owned by the bank.
  - ❖ The building was not located on a dead end street; there was a day care and parking lot at the end.
- Other than those discrepancies, Mr. Kessler had no concern with the use proposal.

Mr. McCoy addressed Mr. Kanakis and asked about the size of the proposed apartments and number of bedrooms in each. Mr. Kanakis explained they would be one or two, depending on the tenant's usage. Mr. McCoy asked what was envisioned. Mr. Kanakis stated he envisioned 2- two bedroom apartments (1200 ft. each).

Mr. McCoy then asked how long Mr. Kanakis had tried to rent the building. He was told two years. Mr. Kanakis was asked to clarify retail rental. He told Mr. McCoy it meant office space and explained.

Mr. McCoy stated his concern was an increase of vehicular and pedestrian traffic on the road with the additional tenants. Mr. Kanakis clarified the amount of proposed traffic generated with commercial versus residential use.

Chairman Nelson asked if there were further questions from the Board. There were none.

Chairman Nelson asked if there were questions or comments from the public. There were none. Kathy Proper identified herself as a member of the LLC requesting the Variance.

Chairman Nelson asked if there were additional questions or comments from the Board. There was a short discussion on previous uses of the first floor between the Board members and Mr. Kanakis.

Chairman Nelson then asked for a motion to go into Deliberations. On a motion by Ms. Saccento, seconded by Mrs. Cassorla; ***the Board closed the meeting to the public and opened Deliberations. The motion passed 5-0-0.***

#### **Variance Statement of Reasons and Discussion**

Mr. McCoy reiterated his concern of additional vehicular and pedestrian traffic in the neighborhood.

Mr. Kessler addressed Mr. McCoy and stated there were currently two apartments in the building where there might potentially be children. There was a daycare that took field trips up and down the street.

Mr. McCoy reiterated the fact that there might be additional pedestrian traffic. There was a discussion between Board members on the additional pedestrians and pedestrian traffic from Main Street apartments.

Mr. Kanakis addressed the Chair and asked to speak. He stated that the mitigating factor was that there were sidewalks on both sides of the street, children and adults would not be walking in the street. There was further discussion and advocacy of the proposed variance.

Chairman Nelson acknowledged Ms. Magnuson. Addressing the Chair, she reminded him that the applicant could tear down the building and erect an apartment house in its place. She explained further.

Mr. McCoy addressed Mr. Kanakis and asked if he thought the Town would need additional housing in the area. Mr. Kanakis stated that the growing trend in cities and towns was to try and provide housing in an area that would be within walking distance to services in the community.

Chairman Nelson stated that that was one aspect that communities look at when building senior housing. Ms. Magnuson concurred and stated that the 2012 Newport Master Plan also spoke to providing this trait in upcoming housing.

Chairman Nelson asked for motions on questions one through five.

On a motion by Mr. Kessler, seconded by Ms. Saccento; that:

***Granting the variance would not be contrary to the public interest because: it would provide residential housing in the downtown area, maintain full occupancy of an historic building downtown.***

Mr. McCoy stated that there seemed to be a precedent for a non-conforming use. He questioned whether the building was ever all apartments. There was discussion among the Board members. It was suggested that a condition be made to specify the number of additional apartments allowed. There was additional discussion. There was no further discussion among the ZBA members concerning question one.

Chairman Nelson called for a vote. ***The motion passed 5-0-0.***

On a motion by Mrs. Cassorla, seconded by Ms. Saccento; that:

***The spirit of the ordinance would be observed because it would keep an historical building in full occupancy and provide needed residential housing in the downtown area.*** There being no discussion, Chairman Nelson called for a vote. ***The motion passed 5-0-0.***

On a motion by Mr. Kessler, seconded by Mrs. Cassorla; that:

***Granting the variance would do substantial justice because it would keep the building intact and keep the character of the neighborhood. All restrictions would be the responsibility of the Heritage Commission and the Planning Board.*** The Chair asked for discussion. There was none. Chairman Nelson called for a vote. ***The motion passed 5-0-0.***

On a motion by Mr. Kessler, seconded by Mrs. Saccento; that:

***The values of the surrounding properties would not be diminished because renting the proposed apartments would provide full occupancy of the building, creating a residential presence.*** There was no discussion. Chairman Nelson called for a vote. ***The motion passed 5-0-0.***

Unnecessary hardship

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:

On a motion from Mr. Kessler, seconded by Mr. McCoy: ***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 it has not been able to be occupied as mixed use and the variance will meet a need to provide residential residencies in the downtown area.*** Chairman Nelson asked for discussion. There being none, he called for a vote. ***The motion passed 5-0-0.***

AND:

On a motion from Mr. Kessler, seconded by Mr. McCoy: ***The proposed use is a reasonable one because: it does provide residences and provide full occupancy of the building.*** Chairman Nelson asked for discussion. There was none. He then called for a vote. ***The motion passed 5-0-0.***

Chairman Nelson called for a motion to memorialize the decision of the ZBA. On a motion by Mrs. Cassorla, seconded by Mr. Kessler; ***the Board voted unanimously to grant a Variance for Case #1036 to Kapro Investment, LLC from the terms of Article IV, Section 409.7 of the Zoning Ordinance to allow construction of two additional apartments for residential use, creating a 4 unit apartment building. The property is identified as Map 111, Lot 010 and is located at 9 Depot Street in the Light Commercial (B-1) and Downtown National Historic Zoning Districts. The motion passed 5-0-0.***

**Case #1037: Kapro Investment, LLC (Owner) and Mark Kanakis (Agent)** request a Variance from the terms of Article IV, Section 409.7 of the Zoning Ordinance to allow construction of two additional apartments without providing for 2 parking spaces per unit. The property is identified as Map 111, Lot 010 and is located at 9 Depot Street in the Light Commercial (B-1) and Downtown National Historic Zoning Districts.

Chairman Nelson opened the hearing and acknowledged Ms. Magnuson. Ms. Magnuson read her Administrative Review into the record. She referenced Section 409.21 parking requirements on Main Street for the Board members to use in discussing and deliberating.

Mr. Kanakis read his application into the record. He offered to waive the parking requirement through the ZBA. He stated that the zoning ordinance encouraged the use of the downtown area, including Depot Street.

Chairman Nelson asked if there were further questions from the Board. Mr. McCoy addressed Mr. Kanakis and stated he had said he would demonstrate proposed parking. Mr. Kanakis complied with his request. He addressed the Board and stated that he would convey to prospective tenants that there wasn't

any parking provided with the new apartments. He addressed the Chair and stated that if it was a requirement of the Board that they stipulate in their leases there was no parking, they would concede to the condition. There was a general discussion on prospective tenant parking between Board members, Ms. Magnuson and Mr. Kanakis. Concluding, Mr. Kanakis reiterated the spirit of the ordinance and that the growing trend in cities and towns was to try and provide housing in an area that would be within walking distance to services in the community. There was a discussion among the Board members and Ms. Magnuson concerning parking and parking precedents. Ms. Magnuson stated that the ZBA could make a condition that a copy of the rental lease be provided to the TOPAZ office. There was further discussion on parking and that potential tenants understood that parking was not provided with a first floor apartment.

Chairman Nelson asked for a motion to go into Deliberations. On a motion by Ms. Saccento, seconded by Mrs. Cassorla; ***the Board closed the meeting to the public and opened Deliberations. The motion passed 5-0-0.***

#### **Variance Statement of Reasons and Discussion**

ZBA members held a lengthy discussion on the location of the proposed apartments, Main Street and available parking. Chairman Nelson then asked for motions on questions one through five.

On a motion by Mr. Kessler, seconded by Mr. McCoy; that:  
***Granting the variance would not be contrary to the public interest because: the building is in the historic district and accommodates the use of a historic building.*** Chairman Nelson called for a vote. ***The motion passed 5-0-0.***

On a motion by Mrs. Cassorla, seconded by Mr. McCoy; that:  
***The spirit of the ordinance would be observed because the building is located within the historic district and it is in line with the Master Plan adopted in 2012.*** Chairman Nelson called for a vote. ***The motion passed 5-0-0.***

On a motion by Mr. Kessler, seconded by Ms. Saccento; that:  
***Granting the variance would do substantial justice because there are similar buildings in the historic downtown district that do not have adequate parking.*** The Chair asked for discussion. There was none. Chairman Nelson called for a vote. ***The motion passed 5-0-0.***

On a motion by Mr. Kessler, seconded by Mr. McCoy; that:  
***The values of the surrounding properties would not be diminished because parking is already an issue downtown.*** There was no discussion. Chairman Nelson called for a vote. ***The motion passed 5-0-0.***

#### **Unnecessary hardship**

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:

On a motion from Ms. Cassorla, seconded by Ms. Saccento: ***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 the property is located in the historic district and within a stone's throw of Main Street which does not have a parking requirement.*** Chairman Nelson asked for discussion. He then called for a vote. ***The motion passed 5-0-0.***

AND:

On a motion from Mrs. Cassorla, seconded by Ms. Saccento: ***The proposed use is a reasonable one because: parking downtown is already a problem.*** Chairman Nelson asked for discussion. There was none. He then called for a vote. ***The motion passed 5-0-0.***

Chairman Nelson called for a motion to memorialize the decision of the ZBA. On a motion by Mr. Kessler, seconded by Mrs. Cassorla; ***the Board voted unanimously to grant a Variance for Case #1037 Kapro Investment, LLC (Owner) and Mark Kanakis (Agent) request a Variance from the terms of Article IV, Section 409.7 of the Zoning Ordinance to allow construction of two additional apartments without providing for 2 parking spaces per unit.*** Mr. McCoy concurred with the motion, stating that conditions to the variance were unnecessary. The Chair called for a vote. ***The motion passed 5-0-0.***

The Board congratulated Mr. Kanakis. Ms. Magnuson stated that a typed Notice of Decision with its conditions would be made available in her office within five days.

**Case #1038: Blaney Real Estate Management LLC/Jake & Jess's Rusty Nut Enterprises LLC (Owners) request a Special Exception as provided in Article II, Section 211.3 of the Zoning Ordinance to permit the sales and repair of automotive, heavy equipment and auto body; in addition to maintaining the sales of heavy equipment, vehicles and maintaining the residential uses, such as, the managers apartment. The property is identified as Map 233, Lot 002 and is located at 300 John Stark Highway in the Industrial (I) Zoning District.**

Chairman Nelson opened the hearing and acknowledged Ms. Magnuson. Ms. Magnuson read her Administrative Review into the record. She stressed to the Board that the owners would like to add the sales and repair of automotive, heavy equipment and auto body to what is currently allowed at the location. Staff recommends a condition that the owners must comply with all state and local regulations pertaining to junkyards, including State of NH RSA 236:126.

Chairman Nelson acknowledged the spokesman for Case #1038. Applicant Mr. Jacob Kezar addressed the Board members and explained their proposal. He explained that they had been at the current location for twenty (20) months and wanted to expand their business to include auto and truck body work. Chairman Nelson asked if there were questions from the Board.

Mr. McCoy addressed Mr. Kezar and asked him to clarify the body work he proposed. Mr. Kezar repeated that he would like to do body work and also buy and sell some cars. Mr. McCoy asked him if he would be doing mechanical maintenance. He was told yes. Mr. McCoy asked for clarification if it was auto and truck maintenance. He was told yes, as well as car sales.

Chairman Nelson asked where the cars for sale would be located. Mr. Kezar explained the proposed area the cars would be located.

Mr. McCoy asked if bodywork was currently being done. He was told no, they did not have the facilities. Mr. Kezar explained his plans. Addressing Ms. Magnuson, Mr. McCoy asked who had jurisdiction over that process. Ms. Magnuson stated it would go through building permits.

Chairman Nelson asked if there were further questions from the Board. He then addressed Ms. Magnuson and stated, for clarification, a recommended condition to approval be to comply with State RSA 236:112 and RSA 236:126. She stated yes.

On a motion by Mr. Kessler, seconded by Mr. McCoy; ***the Board voted to enter into Deliberations. The motion passed 5-0-0.***

## **Zoning Board of Adjustment Special Exception**

Chairman Nelson asked that the Board go through the Standards to see if they had been met by the applicant.

On a motion by Mr. Kessler, seconded by Mrs. Cassorla; *the Board voted that:*

*Standard A.*

*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 had been met. The motion passed 5-0-0.*

On a motion by Mr. McCoy, seconded by Mr. Kessler; *the Board voted that:*

*Standard B.*

*The proposed use will not be injurious, noxious or offensive or in any way detrimental to the neighborhood. Standard B had been met. The motion passed 5-0-0.*

On a motion by Mr. Kessler, seconded by Mrs. Cassorla; *the Board voted that:*

*Standard C.*

*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 had been met. The motion passed 5-0-0.*

On a motion by Mr. Kessler, seconded by Ms. Saccento; *the Board voted to approve Case #1038 Blaney Real Estate Management LLC/Jake & Jess's Rusty Nut Enterprises LLC (Owners) for a Special Exception as provided in Article II, Section 211.3 of the Zoning Ordinance to permit the sales and repair of automotive, heavy equipment and auto body; in addition to maintaining the sales of heavy equipment, vehicles and maintaining the residential uses, such as, the managers apartment. With the condition that all prior conditions from special exceptions on the case on the property remain in effect, specifically Case #879 and Case #880 and that all state RSA provisions concerning Recycling Yards and Junk Yards (236:112) and Motor Vehicle Dealers (236:126) are enforced. The maximum number of motor vehicles for sale does not exceed fifteen at any one time.* Chairman Nelson called for a vote. *The motion passed 5-0-0.*

The Board congratulated Mr. Kezar and Ms. Blaney. Ms. Magnuson addressed the applicants and stated that a typed, signed Notice of Decision with its conditions would be made available in her office within five days.

The Chair addressed Ms. Magnuson and asked if there was additional business. She stated that the ZBA members were to look over the Rules of Procedure at home in preparation for the next meeting. Mr. Kessler reminded the Board of the highway signs that had been taken down concerning bicycle safety. Using his I Pad he showed them what the new signs (which had passed state and federal approval) would look like.

On a motion by Mr. Kessler seconded by Mrs. Cassorla; *the Board voted to adjourn at 8:09 pm. The motion passed 5-0-0.*

**Application materials must be received on/before May 6, 2016 for the next regular meeting of the Zoning Board scheduled on May 26, 2016.**

Respectfully submitted,

Maura Stetson  
Scribe

Approved on November 17, 2016