

Revised and Approved
Zoning Board of Adjustment
Minutes of February 26, 2015
Regular Meeting 6:30 PM
Board of Selectmen's Room/Municipal Building
15 Sunapee Street/Newport, NH

MEMBERS PRESENT: Ben Nelson, Chairman; Melissa Saccento, Vice Chairman; Jeffrey Kessler, BOS Representative; Elizabeth Cassorla, Scott McCoy, Alternate.

MEMBERS ABSENT: David Lain and Donald Boutin

PRESENT FROM THE COMMUNITY: Mr. Dana and Catherine Britt, Carleton Barton, Steven Hosmer, Maureen Marcotte, Walter and Laura Ryan, Maria Brow, Annika and Susan Randall, Kay and John C. McCrillis, Colleen Walker, Michael and Carol Dixon, Nancy J. Loken, Virginia Irwin, Jennifer Rogers, Nancy Donovan, Graziela Cafua, Althea McCollum.

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

CALL TO ORDER: Chairman Ben Nelson called the meeting to order at 6:30 pm followed by an introduction of the sitting members. Chairman Nelson appointed Mr. Scott McCoy to sit for Mr. David Lain.

ADMINISTRATION: There was none.

MINUTES: On a motion by Mr. Kessler, seconded by Mrs. Cassorla; *the Board voted to approve the minutes of the February 12, 2015 meeting with the following correction: page one, under PRESENT, remove 'Alternate' title from Mrs. Cassorla's name. The motion passed 5-0-0.*

NEW BUSINESS:

Before he opened Case #1025, Chairman Nelson went over the ZBA format for the applicants and public in attendance. He explained each step and asked that all conform to the format in order to have an orderly meeting. Chairman Nelson then addressed the public and stated that legal abutters had the right to speak. He would, however, allow others in attendance to speak (he asked that they keep their statements brief). Ms. Magnuson addressed the Chair with a point of order. Addressing the Board and public in attendance, she explained the problem (typo error of South instead of North) that had occurred during the notification process of the case. She stated the five ways (mail, phone, newspaper, NCTV and Town website) in which she had corrected and cleared up any confusion. She explained the definition of abutter for the Board, public in attendance and those viewing NCTV. Returning to the Board, she stated that when the Board reached the part of the meeting for public comments, she had letters and a petition from concerned citizens to be read into the record.

Case #1025: Windy Hill Farm Irrev.Trust (Owners) and Hunt Real Estate Srvs. (Agents) request a Variance to the terms of Article II, Sections 207 & 213 of the Zoning Ordinance to permit a retail store (Family Dollar) in two zones where the use is not permitted. The property is identified as Map 109 Lot 129 and is located at 177 North Main Street in the Residential (R-1) and Professional Business (PB) Zoning District.

Chairman Nelson opened and read Case #1025 into the record.

He then acknowledged Ms. Magnuson and asked for her Administrative Review. Ms. Magnuson addressed the Board and stated she had put up a zoning map for the Board members (and public) to see. She explained the responsibilities of the Zoning Board and the responsibilities of the Planning Board in this case. In it she emphasized that the Planning Board would consider aesthetics of the building. The Zoning Board (on 02.26.15) would concentrate on use of the property, taking into consideration the fact that there were commercial uses already established in the neighborhood.

Chairman Nelson asked for the agent of record and asked that he present his case. He was asked to give his name for the record. Mr. Mackenzie Simpson, Hunt Real Estate Services; stated his client was requesting a variance to move their business from the Shaw's plaza (leased) to the North Main Street location (to own). The company wanted to build a 'free standing' new store instead of leasing property. Using a posted site plan, he explained what his client proposed. Mr. Simpson went over the building area and location of the lot. He reviewed the non-residential buildings and businesses in the immediate area.

Mr. Simpson explained to the Board that Family Dollar needed a one acre lot to build on. He described his 5-6 month search for an appropriate site and the zoning districts he had investigated as well as his meeting with the Town Manager and TOPAZ administrator. After discussion with Ms. Magnuson, the decision to locate the proposed building as close to other commercial businesses was made. Ms. Magnuson explained that any property (not in correct zoning) would have to go before ZBA, PB and the public.

Addressing the public in attendance, he thanked them for coming to the meeting and thanked them (in advance) for their input. He explained that the goal of Family Dollar was to be a part of the community and a good neighbor. He stressed any areas of concern by the public could be incorporated into Family Dollars proposal at the Planning Board stage.

Mr. Simpson stated that the lot was a two acre lot. The back of the lot on Cheney Street would remain in Irrevocable Trust with the current owners. The only piece that would be developed would be the front portion. Mr. Simpson stated that the owner had emphasized that the back lot would remain green space with a community garden. He repeated to the Board and public that the back parcel (1 acre) would not be developed.

He reviewed for the Board the size of the building, hours of operation, ingress and egress and proposed parking. Those proposals would be further vetted at the Planning Board if the project received approval at the Zoning Board. Addressing the Zoning Board members he stated that in the case before them (on 02.26.15) the applicant was requesting a zoning variance to allow the project to move forward with the current zoning. Concluding, Mr. Simpson stated he could go into further detail of the project, but with the number of people in attendance he wanted to allow them to voice their opinions.

Chairman Nelson addressed Ms. Magnuson and asked if she would like to read letters into the record at this time. They decided the letters would wait until public input.

Chairman Nelson addressed the Board members and asked if they had any questions.

Mr. Kessler asked if the existing house would be demolished. Mr. Simpson said yes.

Mr. Kessler asked if the Family Dollar parking lot would be located in that area. Mr. Simpson said yes.

Aloud, Mr. Kessler stated the building would be to the back of the one acre lot. He asked Mr. Simpson if he had photos of what a proposed structure would look like. Mr. Simpson did not have hard copies; photos were shown to both the Board and public from his laptop.

Explaining the photos to the Board, he explained the optimal building that Family Dollar would like to construct. Continuing, Mr. Simpson stated that modifications could be made; but the photo shown gave their (Family Dollar's) standard building construction.

Looking at the photo, Chairman Nelson inquired which way the building would face. He was told it would face North Main Street. Mr. Simpson explained the layout of the building, the sign location, parking area, green space and drainage system that Family Dollar would install and use. He showed the Zoning Board members different photos of Family Dollar buildings with modifications requested by towns. Mr. Kessler addressed Mr. Simpson and asked if Family Dollar had constructed new buildings with a New England look. Mr. Simpson stated that the company has constructed several new buildings to specifications in Maine. They had recently built a Family Dollar in Franklin, NH. Explaining further, he told the Board members that the reason Hunt Real Estate Services had an office in New England was to be able to build stores that were more colonial looking to fit the area. He showed a picture of the Franklin store to the Zoning Board. He apologized for not having more examples of modified buildings for Board members to see.

Mr. Kessler stated that when he (Mr. Simpson) proceeded to the Town Planning Board they would be the ones to work out specifics with aesthetics and layout. Mr. Simpson agreed, stating that they were hoping to have the chance to work to make things agreeable to the town.

For clarification, Mr. Kessler stated that the lot went all the way to Cheney Street. He asked Mr. Simpson to show how far back into the lot (how close to Cheney Street) the construction would go. The building lot would be about one acre. The Cheney Street end would be one acre. Family Dollar stated they would not be disturbing the back lot green space. If the owners and town were in favor, they would put up tree buffers as well. For clarification, Mr. Kessler asked if they would be going 1/2 way to Cheney Street. Mr. Simpson stated yes. There was a short discussion.

Chairman Nelson acknowledged Ms. Magnuson. She stated that Mr. Simpson had been informed about Newport's preference to have brick on buildings, a colonial feel, etc. He reminded the Zoning Board that the Planning Board would have final say on the aesthetics. Continuing, she stated that she had included a booklet in the Board members packets concerning granting variances and ensuring that the use fits the neighborhood (in question). Ms. Magnuson addressed the Board and reminded them of another new building (Dollar General) and the mandatory requirements they had observed (antique lighting, etc.). She had told Mr. Simpson that people in Newport wanted a colonial style building. Mr. Simpson agreed.

Mr. Simpson stated that their goal was to design it (the building) after hearing the public's opinion. He explained.

Mr. Kessler asked the volume of traffic Family Dollar anticipated. Answering, Mr. Simpson explained. He stated that they do not anticipate more than 6-8 cars in the parking lot at a time. Family Dollar (corporate) requires 25 spaces of parking. In development they always create parking in accordance to the town's ordinance. In their plans they put in more than is necessary. Towns like green space. Family Dollar could reduce the number of spaces (from 32 to the required 25) in order to have additional green space.

Chairman Nelson asked if there were any other questions from the Board. Ms. Saccento asked Mr. Simpson to explain the lighting around the building. Mr. Simpson did not have a hard copy of a lighting plan to show the Board. He told them that there would be pole lighting for the parking lot. The pole lights shut off (on a timer) approximately 9 pm. There would be wall pack lighting (downcast and shielded) that would stay on. There were four on each wall of the building. Scott McCoy asked about truck delivery. Mr. Simpson explained deliveries to the store and the delivery timetable (Once a week and during off peak hours). Mr. McCoy asked what Family Dollar considered peak/off peak hours. Mr. Simpson stated peak would be 8-10 am; 4-7 pm. For clarification, Mr. Kessler stated there would be no deliveries after hours. Mr. Simpson agreed. He stated that many PB, ZBAs and residents like the fact that there are no deliveries at this hour. He explained the difference in deliveries between Family Dollar and other stores. He reiterated that deliveries would be once a week.

Chairman Nelson addressed the public and stated that the Board was questioning the applicant (agent); the public would have a chance when the Board was done. He addressed the public and asked if there were people in the hallway (no).

Mr. Steve Bradstreet, design engineer, Bradstreet Consulting Firm; addressed the Zoning Board. Using a site plan he explained how the trucks that would deliver stock to the store. He emphasized that the trucks would deliver once a week and would follow all state DOT and municipal regulations. He illustrated the trucks movements when on site and in the receiving area. He emphasized that trucks were hand off loaded. There wasn't a loading dock or hydraulic lifts. He explained.

Mr. McCoy addressed Mr. Simpson and stated for clarification that there were a minimum of 25 parking spaces. He stated that the plans had 34. Mr. Simpson explained the real estate concept of overdesigning, putting more than might be required by the Planning Board on a plan (easier to remove than to add). Continuing, Mr. McCoy read and indicated on the site plan 'storm water area'. He inquired if it was runoff from the parking lot. Mr. Simpson stated that Mr. Bradstreet could explain it in detail, but that basically it was because of the slope of the site, one had been installed in order to catch the storm water and not tax the sewer system along the road (they had been made aware of the problems there). Explaining further for the Zoning Board, he described the modest slope in the area that they proposed to build on and the steeper slope of the area to be left untouched. He explained the company's responsibility was to match the current runoff rate from the site in their post construction phase. Mr. McCoy then asked about the lighting situation at the proposed site. He asked how long after business hours would the automatic lighting shut off. Mr. Bradstreet stated approximately 30 minutes (9:30 pm). Mr. McCoy asked the number of days and hours of operation. He was told 8am-9pm M-F and 9am-8pm on Sun.

Chairman Nelson addressed Mr. Simpson and stated the zoning districts that the lot and construction would take place. He stated that from the site plan the proposed parking lot was in the Professional District and the proposed store was in the (single family) Residential District. Mr. Simpson stated that was correct. He continued, stating in the zoning ordinance one article that stated what could happen if that use was not allowed. Ms. Magnuson addressed the Board and stated the details of the ordinance Mr. Simpson was addressing. She also stated that the Zoning Board's business at the 02.26.15 meeting was to grant the variance. The lot had not been subdivided. That would happen at a future meeting. Continuing, they could make a condition on the granting of the variance that there would only be construction on the North Main Street side of the lot and not on the Cheney Street side of the lot. She explained.

Chairman Nelson opened up comments to the public. He asked that abutters speak first and instructed them to ask questions and not to voice opinions (he explained). Ms. Magnuson asked that individuals state their name and whether or not they were a noticed abutter.

Mr. Michael Dixon (noticed abutter) addressed Ms. Magnuson and thanked her for her phone call. Addressing Mr. Simpson, he stated he was concerned because there were so many vacant buildings in the commercial district. He asked if there was a reason why Family Dollar chose the proposed location.

Mr. Simpson addressed Mr. Dixon and explained he had looked into space in the new Dunkin' Donuts and the building behind the savings bank. He listed the reasons why neither building worked for Family Dollar. There was discussion between Mr. Dixon and Mr. Simpson.

Mr. Dana Britt (abutter) had concerns. Chairman Nelson stated that the Board was hearing questions; comments would be later in the hearing. Mr. Britt stated there was another lot near Shaw's. He asked if that lot (the old Pizza Hut lot) was too small for their store. Mr. Simpson explained that with areas in plazas the owners only want to lease and not sell. Family Dollar wanted to buy their real estate and not lease (and have landlords). Explaining further, he stated the goal of Family Dollar; they wanted control of their destiny.

Mrs. Catherine Britt (abutter) asked if the property behind the constructed area would be landlocked. Mr. Simpson stated no and explained. Chairman Nelson acknowledged Ms. Magnuson. She stated that the Planning Board would never approve anything that did not conform to the zoning. Addressing Mrs. Britt she stated that TOPAZ would never allow that. Mr. Simpson reiterated that the company would not own the land in question.

Mrs. Colleen Walker (abutter) addressed Mr. Simpson and asked if they would have to cut out six feet because of the hill. Mr. Simpson stated no. Mr. Bradstreet could answer details. Mr. Simpson began to explain the procedure they would undertake to prepare the lot for construction. Mrs. Walker asked if Family Dollar would install a retaining wall. Mr. Simpson stated no, the lot would be sloped; there would be no need for a retaining wall. Repeating information from his presentation, he explained to Mrs. Walker that his company over designs because it is more difficult to go back and change things. Mrs. Walker stressed that it was a steep hill (on the lot). Mr. Simpson went over the grade for Mrs. Walker, emphasizing that the area with construction only had a six foot incline. There was discussion between Mrs. Walker and Mr. Simpson.

Mr. Nelson acknowledged Ms. Magnuson.

Addressing Mrs. Walker, Ms. Magnuson explained that the Planning Board would go over all the concerns she had expressed. Explaining the differences between the Planning Board and Zoning Board, Ms. Magnuson stated the Planning Board looked at the how the building would be laid out on the property, the parking, lighting, grading, etc. That was the Planning Board.

The Zoning Board dealt with if the use fit into the neighborhood. Mr. Kessler added, if the variance was granted (02.26.15) and the case went to the Planning Board, abutters would be noticed again and would have the opportunity to see the final plans and layout of the proposed store, ask questions and voice concerns. Ms. Magnuson added that the Planning Board could add conditions to their approval. Continuing, Ms. Magnuson stated that the Zoning Board could put conditions that they felt were appropriate and the Planning Board could also put conditions on their approval. She stated it was a long process with a lot of review. She reminded the group that NHDOT would weigh in due to the traffic and because it was a state road.

Chairman Nelson addressed the public and stated that comments would be later in the meeting. He acknowledged a gentleman in the audience.

Mr. Walter Ryan, 10 Grove St., Newport; asked if the engineers had considered a parking lot that was not impervious to water (he explained). Mr. Simpson stated they had not gotten that far into the design of the project. He stated in the past they had not considered it (he explained).

Mr. Steve Hosmer (abutter) stated that if Family Dollar was constructed he would be between two commercial stores (Bond Auto and Family Dollar). He questioned where on the lot the store would be located; if it would be located where the old home was currently. Chairman Nelson clarified that the parking lot would be in that area and the store would be behind (the location of the house). Mr. Hosmer asked how close to his property line would the parking lot be. There was discussion among the Board. Mr. Simpson showed the design of the parking lot to Mr. Hosmer. He stated that he would leave changes to the Planning Board, such as a buffer (tree or fence). He stated that that would be considered.

Mrs. Maureen Marcotte, 149 North Main Street, asked how many feet would the parking lot be from Mr. Hosmer's land. Mr. Simpson stated he could not give a definite answer. That was up to the Planning Board. He explained.

Ms. Jennifer Rogers, 14 Grove Street, was concerned about safety precautions and the current location of the crosswalks. Using the peak hours of business that Mr. Simpson had stated, her concern was of the frequency of traffic and children that walk in the neighborhood. Mr. Nelson asked that questions were to be asked now, opinions later. Mr. Simpson asked to answer the question. He stated that Mr. Bradstreet would explain crosswalks, etc. He did want the public to know that one of the reasons the location had been chosen was for walkability. Family Dollar wanted to be a neighborhood, walkable store (he explained the products they planned to stock and for whom). He emphasized that things would be to the town's specifications.

Mr. Kessler added that the driveway (ingress/egress) would have to be approved by the NHDOT. He emphasized that it had to meet their requirements.

Chairman Nelson acknowledged Ms. Magnuson. She explained to the public the process she went through with a project such as the one before the Zoning Board (02.26.15).

Mrs. Virginia Irwin, 182 Fletcher Road, addressed Mr. Simpson and asked if he had looked at the commercial property across from the High School (Dartmouth Motors). Mr. Simpson stated yes. He explained. He explained other lots that he had investigated as well as area zoning.

Mrs. Colleen Walker addressed the Board and passionately told them that she lived on and loved Cheney Street. She stated that she also loved Family Dollar. She did not want it in her neighborhood. Chairman Nelson addressed Mrs. Walker and stated that only questions would be heard. Comments and opinions would be later. Mrs. Walker sat down.

Addressing the public, Mr. Nelson asked if there were any questions.

Ms. Graziela Cafua, owner of Grazi's store on North Main Street, addressed Mr. Simpson and asked what would be sold. Mr. Simpson addressed Graziela and stated there might be an overlap with her products. He had been in her store. He listed items her loyal customers would continue to buy from her. He listed some items Family Dollar would sell that would not conflict. Mr. Simpson and Ms. Cafua discussed overlapping items in their stores.

Chairman Nelson interrupted the discussion and again stated that only questions would be heard at this time. Ms. Cafua argued, but conceded the floor. She then intensely questioned Mr. Simpson, asking about her store, the overlapping items in the two stores, and her store's fate. There was a discussion between Mr. Simpson and Ms. Cafua. Ms. Cafua asked Mr. Simpson when the project would go forward if it passed both Zoning and Planning Boards. Mr. Simpson stated it might not happen until spring of 2016.

Ms. Magnuson added that there is a state law that a Zoning Variance needed to be acted on within two years (of its being granted).

Chairman Nelson asked if there were questions from the Board.

Ms. Saccento asked about property value impact. Mr. Simpson was unsure. He did state that the construction would be an improvement to current land use. He explained.

Mr. McCoy stated that on his sheet to the Board the assessed value would increase to \$700,000-\$800,000. Mr. Simpson explained.

Mr. Kessler asked if he had gotten feedback from his store in Franklin, NH. Ms. Saccento asked if there was historic feedback on property value from other buildings constructed. Mr. Simpson asked for clarification on what was asked. He stated that he did not have price information from a Newport residential real estate broker.

Ms. Saccento asked if it was a new concept to have a free standing Family Dollar building. She was told yes; two years. Mr. Simpson stated that Family Dollar had built stores abutting residential sites before.

Chairman Nelson addressed the room and stated the hearing would be opened to public comment. Before those in attendance spoke, Ms. Magnuson had some letters to read into the record.

Ms. Magnuson yielded the floor to Mr. Carleton Barton, (abutter), spoke on his concern about drainage and how water flowed off of his property onto the proposed property lot. He wanted to know if they had taken that into consideration (for building) or not. Mr. Simpson stated Mr. Bradstreet would address it. Mr. Simpson stated that on previous sites that had been brought to their attention and through design water drainage had been improved. Ms. Magnuson stated they would have to. Mr. Simpson stated that the current owner had made them aware of the runoff and flooding as well.

Mr. Nelson Aldridge, 162 North Main Street, wrote stating he was not in favor of the construction.

Mr. Vern Violette, (abutter) 151 Cheney Street, wrote stating he was not in favor of the construction of Family Dollar.

Ms. Magnuson stated she had received a petition on 02.26.15 with 48 signatures. 27 were abutters.

Clarifying, Ms. Magnuson stated that some were abutters, others were people that would not be affected by the construction of Family Dollar (they would not have standing in the case). Mr. Kessler asked that the petition be read into the record. Ms. Magnuson complied.

Chairman Nelson addressed those in attendance and stated that comments and opinions would be accepted by the Zoning Board at this time.

Mr. Dana Britt stated he was concerned about the safety of children. He stated that the area was a difficult one for them to walk in. His other concern was that he would like to see it stay residential.

Mr. Hosmer agreed with Mr. Britt and stated that he was concerned with potential noise. He already has problems with the noise from the convenience store. He explained the additional burden.

Ms. Nancy Loken, 144 Cheney Street, stated she was against Family Dollar going in on the North Main Street property.

Ms. Susan Randall, (abutter), expressed her love of the property as is. She gave her support to the Family Dollar store, but not in her neighborhood.

Ms. Jennifer Rogers expressed her support of the Family Dollar store, but not in her backyard.

Ms. Mara Brow, 14 Grove Street Apt A, stated that she was concerned about all the pets and young children in the area potentially getting hurt.

Mrs. Kay McCrillis, 139 Cheney Street, stated her concern was the additional traffic. Cheney Street would not be the same residential area. She was afraid that people would sell their houses and there would be more businesses (in the area).

Mrs. Colleen Walker asked if there was another location to build the Family Dollar. She listed some. Mr. Simpson addressed Mrs. Walker and those in attendance and stated that if they knew of another location to let him know.

Chairman Nelson addressed Mr. Simpson and Mrs. Walker. He stated that they were only looking at the North Main Street location during the (02.26.15) hearing.

Addressing Mr. Simpson, Chairman Nelson stated that he could speak during rebuttal.

Mr. Dixon (abutter) thanked the Board for their time. Addressing Mr. Simpson, he stated he was not anti-business. He had bought his home because he wanted to live in a residential neighborhood. Because of this he urged the Board to vote no on the variance request.

Mrs. Maureen Marcotte, 149 North Main Street, went through the current businesses on the street. She thought that Bond and Grazi's stores were grandfathered into the residential neighborhood. She discussed the traffic, both on foot and vehicular. Addressing the Board, she asked them not change the zoning in the area.

Ms. Annika Randall, 164 Cheney Street, stated she agreed with Mrs. Marcotte.

Mrs. Catherine Britt, (abutter), 172 North Main Street; stated that from her location she has green space to look at. She said it (the store) would impact that for her. She asked if store hours could be changed. Mr. Simpson stated no, explaining it was corporate policy.

Ms. Brow stated that she worked at the community garden. She and others were concerned that it would be vandalized. The garden provided fresh produce for the food pantry in town.

Mr. John McCrillis, 139 Cheney Street, stated he was neighbor to many abutters. He told the Board it was good to have a nice residential district and he hoped it remained that way.

Mrs. Carol Dixon, (abutter), 168 Cheney Street; indicated the potential noise and disturbance that would accompany the Family Dollar store.

Ms. Graziela Cafua, stated she did not know how Family Dollar going into the North Main Street location would help her store. In frustration she asked what she would do with her store (inventory). Addressing Mr. Simpson she gave a further discourse on the subject.

Ms. Althea McCollum, Grazi employee, interrupted and addressed the Zoning Board. Ms. McCollum stated that Ms. Cafua would not have purchased the property (Grazi's store) 14 months ago if she had known that Family Dollar was going to build across the street. Continuing, she stated that it wasn't just a danger to the children, but that Grazi will lose a significant amount of money trying to sell the property/store. She hoped that the Zoning Board would deny the variance.

Mrs. Marcotte, 149 North Main Street, wanted to bring the traffic to the attention of the Board. She asked that they look at the intersections (Oak and Main) and how they align with the store's proposed ingress and egress. She also addressed the truckers, school buses and other vehicles that park on the side of the road (east) to go into Grazi's. Mrs. Marcotte asked that the Board take into consideration all that the public had said at the meeting. She thanked the Board.

Moving on, Chairman Nelson addressed Mr. Simpson and stated he could now address any of the public's concerns.

Mr. Simpson made a general comment, thanking everyone for attending the meeting, especially the young children. He addressed the community garden. He stated that the community garden would not be affected by the construction. Using the site map, he emphasized the area that would remain green space. Continuing, he stated his goal was not to affect Cheney Street at all. He explained. He addressed the local business and its merits. Continuing onto Family Dollar, he explained the company wanted to invest in Newport. It wanted to provide a better atmosphere and store for its customers. Addressing the abutters, he asked that they go to the Planning Board and give their input there as well. Broaching the safety aspect, he assured them that Family Dollar wanted safe ingress and egress to their store. He explained. Concluding, Mr. Simpson repeated that Family Dollar wanted to reinvest in Newport, NH.

Chairman Nelson asked if there were any questions from the Board. There were none. He then acknowledged Ms. Magnuson. She asked that Mr. Simpson read his application into the record. After discussion, Chairman Nelson addressed Mr. Simpson and asked that he read his application into the record.

Mr. Simpson had a short discussion with Ms. Magnuson and then read his application for a variance.

Chairman Nelson asked the Board if they had any questions. Mr. McCoy asked the Chair if Board members were to challenge or question the applicant (at this time). Chairman Nelson answered that Board members were to ask questions. Deliberations would be later. Mr. McCoy thanked the Chair. Ms. Magnuson addressed the Board and stated that they should narrow any questions they had to the applicant's answers to any of the (5) questions. Continuing, Ms. Magnuson stated that the Board might want to confer with the applicant and see how he wanted to proceed: whether to have a continuance (another meeting).

There was a short discussion between the Board and Ms. Magnuson on the property lot. Mr. Simpson explained the process and procedure. Ms. Cafua stated she had approached the owner about selling the lot to her and he had stated he was not interested.

Chairman Nelson asked if there were questions from the Board.

Ms. Saccento stated that she had heard Mr. Simpson had looked at other locations on Main Street. She asked if he had looked at other streets. He had. He had also looked at traffic patterns and locations that would be successful. They wanted to be accessible to those with and without vehicles.

Ms. Magnuson stated that Mr. Simpson had contacted the Town Manager and they had brainstormed locations. In discussing the proposed lot, she had expressed it was not zoned for commercial use.

Chairman Nelson addressed the public and asked if they had comments. He asked that they not restate things already said in the meeting. There was no comment.

Chairman Nelson addressed Ms. Magnuson and asked for the proper procedure for continuance or not. Ms. Magnuson explained. Mr. Simpson asked the reasoning for a continuance. There was discussion between Ms. Magnuson, Mr. Simpson and the Chair. Chairman Nelson announced a five minute recess of the Zoning Board for the applicants to confer, after which they would consider a continuance of Case #1025.

After the recess Chairman Nelson asked the applicants if they would like to continue (the meeting) or ask for a continuance. Mr. Simpson stated they would continue.

Chairman Nelson called for a motion to go into Deliberative Session. On a motion by Mr. Kessler, seconded by Mrs. Cassorla; ***the Board voted by roll call vote to go into Deliberative Session. The motion passed 5-0-0.***

Chairman Nelson explained to the applicant and public that the Board was in Deliberative Session. There would be no further input from the public

Ms. Magnuson addressed the Board and stated that page two of the Administrative Review was for their use in deliberations. She stated that she wanted Board members to be thorough and list comprehensive reasons for their decisions. The worksheets would be an important part of the case record. She asked the Chairman to instruct the Board members and decide when to write their answers: as they went along or at the end of all five questions.

Ms. Magnuson addressed the applicants and explained the worksheets and the procedure the Zoning Board members took in making their decisions. Chairman Nelson addressed Ms. Magnuson and the Board and stated they would fill out the worksheets as they went through each question. Chairman Nelson stated that if one question failed, the variance request failed. He asked Ms. Magnuson for proper procedure-if one question failed should the Zoning Board continue with the other questions. Ms. Magnuson stated Zoning Law was complicated; explaining to the applicants and Board voting and the problems that could arise (which would need to be reviewed by the Town counsel). Ms. Magnuson then stated that she had provided a sheet to the Board members explaining what they should be discussing in deliberations pertaining to each question. She then asked the Chair to proceed.

Chairman Nelson addressed the Board and asked them to proceed with a general discussion on Case #1025. Mr. Kessler addressed the Board and cited the April 10, 2012 Master Plan, Chapter 3 Land Use (www.newportnh.net under Zoning Board). Referencing the 2012 Plan, Mr. Kessler stated that the Town had identified future use of the proposed area as a mixed use commercial core. It is an area where the Town had expected to expand commercial businesses.

Mr. McCoy asked for clarification of commercial. He gave his understanding of commercial and stated he did not feel the proposed use would fit that. There was discussion concerning the definition of commercial and industrial uses. Ms. Magnuson tried to compare the two views of the Board members, the current zoning in the area and what the Town was trying to encourage (for growth).

There was discussion on the necessity of changing the zoning in the area. Ms. Magnuson explained that re-zoning would need to go through a Town Meeting vote. Clarifying, Mr. Kessler stated that the

Planning Board would bring the re-zoning to the Town Meeting. There was continued discussion. Ms. Magnuson read into the record the decision at Town Meeting in 1990 to change the zoning on part of North Main Street.

Chairman Nelson asked if there was further discussion. He stated that Newport wanted walkable communities and business development. Continuing, he said that R-1(residential) was “sacrosanct” in Newport. He gave examples of severe decisions made in R-1 in the past.

Mr. McCoy stated the Board had discussed the impact the store and building would have on North Main Street. They had not discussed the impact on Cheney Street. He explained.

Mrs. Cassorla queried what the decision would be if the current businesses were not there. Individuals were okay with Bond and Grazi’s because they are there (in the neighborhood). Continuing, she asked what future residents would feel about having the store in the area. The Board members discussed the pros and cons of having the store on the proposed lot and the (stewardship) responsibility they have. Chairman Nelson stated the fact that the neighborhood changed over time needed to be considered. There was discussion of the entire neighborhood.

Mr. McCoy conceded that Grazi’s had lights on at night. He questioned having a box store (in the proposed lot).

In a lengthy discussion, items covered were the impact of the stores on Washington Street (Claremont, NH) to home owners in that city’s area, the impact of multiple (stock item) deliveries in Newport, the impact of a store in an R-1 part of town.

Ms. Magnuson addressed the Board and stated that they had been having a good, long discussion. The Board did not have to make a decision at the (02.26.15) meeting. Continuing, she explained that the Board could pause (their deliberations) and continue at another (meeting) time. She explained. Ms. Magnuson emphasized that the Zoning Board did not have to make a decision at the 02.26.15 meeting. She explained and gave an example of when this had occurred.

Chairman Nelson concurred and explained. He asked the pleasure of the Board. Mr. McCoy asked for clarification. Chairman Nelson explained. Ms. Saccento made a motion to continue the meeting to another date. There was a lengthy discussion while Board members conferred their calendars. Mr. McCoy addressed the Board members and asked who was ready and who was not. There was discussion between the Board and Ms. Magnuson.

Ms. Magnuson addressed the Chair and asked that he question each Board member and see if they were ready to vote. Ms. Saccento asked that February 12, 2015 be added to her motion for a recess. There was discussion and clarification. Ms. Saccento changed her motion to: ***recess the deliberative session until March 26, 2015 at the next regular Zoning Board meeting. Chairman Nelson called for a second. There being none, the motion died.***

Chairman Nelson addressed the Board members, and asked if they wished to continue a general discussion or to vote on the variance questions. There was discussion and clarification of the (dead) motion and the following procedure. Ms. Magnuson addressed the departing public, explained the Board’s decision and asked them to leave quietly. She then addressed the Chair and explained one way to go through the questions during deliberations.

Variance Statement of Reasons and Discussion

Each question was read; going through each criterion for discussion and roll call votes.

Chairman Nelson made a motion on question number one using the modified criteria provided by Ms. Magnuson (*the wording has been added to each variance question*).

Chairman Nelson read the first question.

Granting the variance would not be contrary to the public interest because: *'Does the variance alter the essential character of the neighborhood OR threaten the health, safety or general welfare of the public?'*

Mr. Kessler motioned it would not and explained, using the other stores in the area that were destinations for people to shop as examples. The safety concerns of students were null because they (the students) walked in the street and not on the existing sidewalks.

Chairman Nelson asked for a second. Ms. Saccento seconded.

Chairman Nelson asked for discussion.

Mr. McCoy asked for procedure. There was an explanation given and discussion. Mr. McCoy stated he disagreed with Mr. Kessler. It is contrary because it conflicts with the ordinance (he listed them). He stated that he did not believe it was in the character of the neighborhood. He stated the size difference between Grazi's, Bond Auto and the proposed Family Dollar. Continuing, he stated it (Family Dollar) would be a big box store in a residential neighborhood. He repeated concerns of residential impact from public input and stated revised zoning ordinances for the use of the area. He questioned whether promises would be kept. Repeating his opinion, Mr. McCoy stated it did not meet with the conforming spirit of the ordinance.

Mr. Kessler addressed Mr. McCoy and corrected him, stating that if the Planning Board told Family Dollar they had to make the exterior look conforming to New England there was enforcement (of the condition). Mr. McCoy addressed the Board members and voiced concerns of the Planning Board not making the conditions. Mr. Kessler again addressed Mr. McCoy and stated that the Zoning Board could include a recommendation to the Planning Board for any concerns. The public could also come in and express their desires (at the Planning Board). Continuing, he gave a brief historical account of the Planning Boards decisions.

There was a lengthy discussion between the Board members. Ms. Magnuson addressed the Board and asked that they focus on the question and motion at hand. Chairman Nelson addressed Ms. Magnuson and discussed the reasoning behind building at the proposed location.

There was a continued lengthy debate comparing the established businesses to the proposed, the vacant property lots in the area, the job of the Planning Board; as well as any visual impact from Cheney Street with the row of trees that are already there.

There was a lengthy discussion on re-zoning the North Main Street section. Mr. Kessler stated that one of the advantages of a variance process was to allow the Board to grant the use of a lot that would not conform to the current zoning, while keeping the rest of the area intact (with the zoning). Mrs. Cassorla agreed, discussed the pros and cons to the case and stated it (variances) would currently be a case by case situation for the Zoning Board.

Chairman Nelson clarified, stating it was called 'spot zoning'. Reiterating, Mr. Kessler said that the Zoning Board could make the spot zoning changes on a case by case situation. If the number of cases (for variances) increased, and the character of the neighborhood changed, that would be emphasis to change the Zoning in the area. The discussion was repeated among the Board members concerning area businesses. Ms. Magnuson stated (as a point of order) that one business (home) had received a Special Exception.

Mr. McCoy asked for an explanation of Special Exception as pertained to an area business. Discussion continued on other aspects of zoning. Mrs. Cassorla stated that the proposed lot was located between two commercial zones. There was prolonged discussion on the store, including concern of placement and proportional size of the store to another establishment on a nearby lot. Chairman Nelson addressed the Board and asked to finish discussion. Mrs. Cassorla addressed Mr. McCoy and discussed improved safety (with the Family Dollar store). Ms. Magnuson addressed the Zoning Board (with a point of order) and stated that NHDOT would address safety and the street.

Mrs. Cassorla questioned Ms. Magnuson. Ms. Magnuson clarified for Mrs. Cassorla that she (Mrs. Cassorla) would be discussing the safety or well-being of the public in her comments (worksheet). Ms. Saccento asked what the definition of neighborhood was (for Case #1025). There was discussion. She was told the definition of neighborhood was subjective. Chairman Nelson addressed the Board and explained the various opinions given (Board members and residents). Mrs. Cassorla asked a procedural question: the correct way to answer the worksheets; whether to only give their own opinions). She was told yes. Ms. Magnuson stated that Chairman Nelson would call for a roll call vote. Chairman Nelson called for a roll call vote. ***The vote failed 1-4-0 (Saccento, McCoy, Nelson, Cassorla voted no).***

Chairman Nelson addressed Ms. Magnuson and asked if they needed to continue. Ms. Magnuson stated yes, explaining the applicant could appeal the Zoning Board's decision. If they continued, they would have discussed all of the variance criteria. Mr. McCoy asked a procedural question concerning the worksheets. It was explained.

Ms. Magnuson read into the record the reasons (from her handbook) for answering all five questions. She explained the excerpt and the Zoning Board's responsibilities.

Number two:

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

The spirit of the ordinance would be observed because: *Does the variance violate the spirit and intent of the ordinance by allowing this use? What is the essential character of the neighborhood or locality?*

The spirit of the ordinance would be observed because the neighborhood already has a commercial and retail presence in it.

Mr. McCoy argued that the spirit of the ordinance would not be observed. He stated that the same arguments given for number one applied to number two. Ms. Saccento agreed (with Mr. McCoy). For clarification, Ms. Magnuson stated that Mr. Kessler's motion was opposite of Mr. McCoy's statement. Ms. Saccento agreed. Mr. McCoy addressed Ms. Magnuson and questioned the worksheet and the question posed for considering a variance. He asked how it applied, stating it had nothing to do with the spirit. He explained. There was a lengthy discussion and debate between the Board members on the question, zoning ordinance, future zoning and the Master Plan. Ms. Magnuson interrupted with a point of order for discussion. There was additional discussion.

Chairman Nelson instructed the Board to concentrate on question two and not the Master Plan. He then began a new discussion on the spirit of the ordinance. There was excessive discussion about the neighborhood, Main Street, vacant buildings in Newport and the changing dynamics in Newport.

The Zoning Board again discussed zoning districts and variances in the concerned area. Mr. Kessler and Chairman Nelson discussed where spot zoning would be useful and appropriate. They had an extensive discussion on the proposed area and spot zoning.

Chairman Nelson called for a roll call vote. ***The vote failed 1-4-0 (Saccento, McCoy, Cassorla, Nelson voted no).***

Number three:

On a motion by Mr. Kessler, seconded by Mrs. Cassorla; granting the variance would do substantial justice because: *Is there a greater gain to the general public verses a loss to an individual (or group) by granting the variance?*

Granting the variance would do substantial justice because it would preserve business that benefits a large part of the population in Town, it would increase the property value of the town, be a model to attract other businesses to Newport and thereby the inconvenience (or perceived inconvenience) of

some people in the immediate neighborhood would be offset by the overall value of having this development in Town would bring.

Mrs. Cassorla agreed with Mr. Kessler. She explained. Chairman Nelson also agreed with Mr. Kessler's motion. He explained. Mr. McCoy stated it would not do substantial justice. It would have a negative effect on the convenience store. There was intense and lengthy discussion by Board members on new businesses coming to Newport; referring at times to the 2012 Master Plan and handouts in the Board members packets. The Chair called for a roll call vote. ***The vote passed 4-1-0 (McCoy voted no).***

Number four:

On a motion by Mrs. Cassorla, seconded by Mr. McCoy;

For the following reasons, the values of the surrounding properties would not be diminished: *Has the applicant demonstrated that the project will not decrease values?*

Historically when commercial properties go in and it is zoned appropriately the surrounding land gains value. (Pertaining to Case #1025) the properties that are directly south of the proposed site is zoned Professional Business-PB. They could potentially put a professional business in there which would increase the home (value) directly adjacent to the proposed site.

There was an extensive discussion on the increase or decrease of property values and why; as well as what the area would look like in the future.

Ms. Magnuson addressed the Chair and Board and clarified for them that they needed to decide if the applicant had demonstrated that the property value would not decrease; not the neighbors, etc. Explaining further, she asked if the Board was convinced that the applicant demonstrated it. There was further discussion and debate among the Board members. Chairman Nelson called for a roll call vote. The Board members asked for the motion again.

Mrs. Cassorla repeated her motion: ***The values of the surrounding properties would not be diminished because historically property values near commercial properties typically increase.*** The Chair called for a roll call vote. ***The vote passed 3-2-0 (Saccento, McCoy voted no).***

After discussion on procedure, Mr. Kessler made a motion, seconded by Mr. McCoy; for both 5i. and 5ii.

Number five A. i.:

Unnecessary hardship

5 A. For the purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area: *Has the applicant demonstrated that the property is burdened by the uses permitted in R-1 & PB because it is distinct from other properties in those zoning districts? A. Discuss whether or not the restrictions as applied to this property serve (or don't serve) that the purpose is in a "fair and substantial" way. B. Has the applicant established that the proposed use is reasonable and does not alter the character of the neighborhood?*

There was a discussion on procedure. Ms. Magnuson explained to the Board that if there was a hardship, vote in favor of it (the variance). For clarification, Mr. McCoy repeated her instruction.

(Mr. Kessler made a motion on #5, both i. & ii.)

On a motion by Mr. Kessler, seconded by Mr. McCoy;

There is a fair and substantial relationship, resulting in unnecessary hardship because the applicant has made an effort to find suitable property elsewhere in Town and has not been able to locate other property that meets their needs.

And (ii) ***the proposed use is reasonable because there are similar commercial properties in the neighborhood.***

There was discussion among Board members concerning the wording of the question as well as the Board members voting (i. & ii. together; or separately). Mr. McCoy went over the hardship factor in the motion. He stated that not being able to locate property was not a hardship (to Mr. Simpson). That was his job. He explained. There was debate among the Board as to the definition of hardship (as pertained in Case #1025).

Ms. Magnuson addressed the Board and advised that they should decide if the property is burdened by hardship by being zoned R-1 & PB. Mr. McCoy asked for clarification of what constituted burden. There was a lengthy discussion between Mr. McCoy and Board members.

Mrs. Cassorla addressed Mr. McCoy and began an overview. Mr. McCoy addressed Mrs. Cassorla and refuted her explanations. She listed the numerous commercial establishments in the area, and stated it was currently mixed use. Zoning required a variance for the applicant to proceed. That was the hardship. There was lengthy discussion concerning hardship.

There was further extensive and repetitive discussion between Mr. McCoy and the Board members. Discussion included precedents, the subject of spot zoning and whether it (Family Dollar) was a correct use in the proposed location. The Board continued discussion, deliberating granting or not granting the variance.

Ms. Magnuson addressed the Board and stated that if there was a special set of circumstances on the lot that was different from others in the same zoning district, any lot that is zoned this way... If there is a special set of circumstances that they (the applicant) has convinced you (the Board) apply to that property, that's what you (the Board members) should be looking at. She explained their decision should be based on the applicant's presentation. If the applicant had convinced the Board members there was a hardship, they (the Board) should vote in favor of the prong. If he hadn't they should not (vote in favor of the prong).

There was a discussion among the Board.

Ms. Magnuson again read into the record details by which the Board members should make their decisions. She then explained.

There was further discussion and clarification between the Board and Ms. Magnuson concerning the definition of hardship. There was further discussion between the Board and Ms. Magnuson on voting on the variance and conditions on their motion. Ms. Magnuson addressed the Chair and asked that the Board focus on the question of hardship that was before them.

Procedure for 5 i & ii was reviewed.

Mr. Kessler was asked to withdraw his motion (he did) and Mr. McCoy his second (he did).

Chairman Nelson then asked for a motion on 5i.

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

Owing to special conditions of the property that distinguish it from other properties in the area: denial of the application would result in unnecessary hardship because the applicant has looked and not been able to locate acceptable property for his business in other areas (of Town). There was no discussion.

Chairman Nelson called for a roll call vote. ***The vote passed 3-2-0 (McCoy, Nelson voted no).***

AND:

On a motion by Mr. Kessler, seconded by Mr. McCoy

The proposed use is a reasonable one because: it is similar to other uses in the neighborhood.

There was no discussion. Chairman Nelson called for a roll call vote. ***The vote failed 1-4-0 (Saccento, McCoy, Nelson, Cassorla voted no).***

Chairman Nelson asked for a motion to reaffirm granting the Variance for Case #1025.

On a motion by Mr. Kessler, seconded by Mr. McCoy; ***the Board voted to grant a Variance for Case #1025 as presented with the condition that all traffic (ingress and egress) and use of the property for this purpose be off of North Main Street.***

There was lengthy discussion on the motion. Mr. Kessler explained that the lot had not been subdivided. With the proposed condition the Zoning Board would ensure that traffic did not enter or exit onto Cheney Street. ***The motion failed 1-4-0 (Saccento, McCoy, Nelson, Cassorla voted no).***

Chairman Nelson addressed the applicant and stated his variance had not been granted.

Mr. Makenzie Simpson addressed the Chair and Board members and thanked them for their time and consideration. He then addressed the public in attendance and thanked them for their input. There being no further business; on a motion by Mrs. Saccento, seconded by Mr. Kessler; ***the Board voted unanimously to adjourn the meeting at 10:25 pm.***

The next regular meeting of the Zoning Board is scheduled for March 26, 2015, at 6:30 pm.

Application materials must be received on/before March 3, 2015 for the next regular meeting of the Zoning Board scheduled on March 26, 2015.

Respectfully submitted,

Maura Stetson
Scribe