

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, May 4, 2020

6:30 PM

Remote Meeting via Zoom

Members Present:

Joshua Gorman, Chair
Joseph Hoppock, Vice Chair
Jane Taylor
Joshua Greenwald
Michael Welsh
Arthur Gaudio, Alternate
Louise Zerba, Alternate

Staff Present:

Corinne Marcou, Zoning Clerk
John Rogers, Zoning Administrator

Members Not Present:

Chair Gorman called the meeting to order at 6:30 PM. He read a prepared statement explaining how the Emergency Order #12, pursuant to Executive Order #2020-04 issued by the Governor of New Hampshire, waives certain provisions of RSA 91-A (which regulates the operation of public body meetings) during the declared COVID-19 State of Emergency. He explained the procedures of the meeting and how the public can participate.

1) Introduction of Board Members

Roll call was conducted, with each Board member and staff member stating their name, location, and who was in the room with them (if applicable). Mr. Rogers noted that the two alternate members, Louise Zerba and Art Gaudio, will be participating in discussions but will not be voting on motions.

2) Minutes of Previous Meeting – April 6, 2020

Mr. Welsh made a motion to approve the meeting minutes of April 6, 2020. Mr. Hoppock seconded the motion, which passed by a unanimous, roll call vote.

3) Unfinished Business

Zoning Administrator John Rogers stated that there is no unfinished business.

4) Hearings

- a) **ZBA 20-08:** Petitioner, Frederick A. Farrar, Inc., represented by Kendall W. Lane, Esq., Keene, requests a Variance for property located at 15 Avon St., Tax Map #578-003-000; that is in the Commerce District. The Petitioner requests a Variance to permit the installation of a transformer and dumpster within a fenced enclosure as an accessory use in the front setback in front of the building at 15 Avon Street per Section 102-887 of the Zoning Ordinance.

- b) **ZBA 20-09:** Petitioner, Frederick A. Farrar, Inc., represented by Kendall W. Lane, Esq., Keene, requests a Variance for property located at 15 Avon St., Tax Map #578-003-000; that is in the Commerce District. The Petitioner requests a Variance to permit the installation of a transformer pad 6'8" x 7'8" located five feet from Avon Street surrounded by a security fence, which will be one foot from the Avon Street right of way when a setback of 20 feet is required per Section 102-791 of the Zoning Ordinance.

Chair Gorman stated that ZBA 20-08 and ZBA 20-09 will be presented together but voted on separately. He read ZBA 20-08 and ZBA 20-09 and asked Mr. Rogers to speak.

Mr. Rogers stated that both applications are dealing with the same issue. He continued that in two sections, the Zoning Code speaks to the front setback, whether it be an accessory use or structure. This explains the two applications, even though the applications are for the same transformer proposed.

Mr. Rogers continued that the property is located at 15 Avon Street which is in the Commerce District. He showed the location on a map, explaining that it is right behind Valvoline Instant Oil Change on West Street. The applicant proposes that the transformer, which is currently on a pole across the street, be upgraded to larger one, which would be required to be on the ground within the front setback.

Mr. Welsh asked what the two properties to the south are, on Avon Street on the same side of the road. Mr. Rogers replied that Kiser Orthotic and Prosthetic Services directly abuts with a vacant office building as the other.

Ms. Taylor stated that she read both applications and is confused, trying to distinguish between the two. Ms. Taylor questioned which application would be the accessory use? She thought the pad was just a foundation that was part of it. Mr. Rogers replied that she is correct; there will be a cement pad that the transformer will be placed on. He continued that in the past they have treated these as an accessory-type structure, like a shed or something similar. They do not see these often. Many times these transformers are in the right-of-way and part of Eversource service lines. This one will be on private property and privately-owned.

Ms. Taylor stated that she still does not understand why the pad and transformer are considered separate structures. She also asked where the dumpster is currently located. Mr. Rogers replied that that they are not separating them out; they would consider the pad and transformer as one item. He continued that the dumpster currently sits to the southeast side of the building where there is paving and added the applicant could speak to it better.

Ms. Taylor stated that if the transformer and pad are basically one, she does not understand why they need two separate Variances. Mr. Rogers replied that the first Variance speaks of Section 102-791 – Basic Zone Dimensional Requirements, the chart that outlines the setbacks, then the definitions section that speaks to what setbacks are would prohibit any sort of building or structure to be in the front setback. He continued that the second Variance they are asking for relates to Section 102-887 – Front setback, which says “No accessory building or use may occupy any part of a front setback.” There are two sections of the Code that speak to the same thing, so it was the recommendation to the applicant to apply to the two Variances, even though it is the same structure and the same setback.

Mr. Hoppock asked about the picnic table in the photo of the front of 15 Avon Street. Mr. Rogers replied that is the proposed location for the transformer. Mr. Hoppock asked what the impact would be on the sidewalk, and what the impact would be with snow removal in the area. Mr. Rogers replied that the sidewalk will not be affected. He continued that he does not know how close they would be coming to the sidewalk, but the applicant does want to put a fence to screen the transformer and the dumpster. Mr. Hoppock replied that maybe Mr. Lane can address that during his remarks.

Ms. Zerba asked what the frontage is from the building to the edge of the sidewalk, and what it is on the north. Mr. Rogers replied that this might be a question better asked of the applicant. Ms. Zerba replied that when Mr. Lane speaks she would like to know the distance from the building to the edge of the property on all four sides.

Mr. Gaudio asked if safety is the purpose of the fence. He continued that the transformer across the street does not have a fence. Mr. Rogers replied yes, it is partially about safety, and the purpose of the fence is to screen it off. He continued that the applicant would have to adhere to the Electrical Code, ensuring that the fence is not too close to the transformer, as there needs to be an allowed distance for maintenance. The intent is also to screen the dumpster and the transformer they are proposing. He continued that he just found some of the information Ms. Zerba was looking for - the fence is proposed to be one foot from the edge of the sidewalk.

Chair Gorman thanked Mr. Rogers. He opened the public hearing, and again gave the phone number for members of the public to use if they wish to participate. He asked Kendall Lane to speak.

Kendall Lane, speaking via phone from 47 Mechanic Street, Suite 1, stated that he is representing Frederick A. Farrar, Inc. He continued that to start with some background on the applicant. Originally established in the mid-1930s on St. James Street in an area that is now a parking lot, Frederick A. Farrar, Inc. moved to their current location on Avon Street. The building was built in 1947 to house the business. The company builds and repairs engines, from fairly small ones to fairly large ones. Slide Exhibit B shows an engine they are currently working on. It was transported to Keene from a Naval Air Station on Cape Cod and is in a number of pieces in the shop at 15 Avon Street. The problem the company runs into is the current transformer is about 25 years old and is relatively small. To work on an engine of the size shown requires more power than the current transformer is able to provide. As an example, if his clients would tested the engine, it would blow the power for the whole side of West

Street. The Farrar's have been working with Eversource for about 2.5 years for the installation of a new transformer. They have come to an agreement for the Farrar's to purchase and install a new transformer.

Mr. Lane continued that the company began looking for where the new transformer could be located. First, they looked at the roof, which would be ideal but unfortunately, when the building was constructed in 1947, it was not designed to with stand the weight of the proposed transformer. Currently, when there is a heavy snowfall the company has to shovel off the roof, as the building cannot support the weight. They then looked at the parking area, shown in Exhibit C. The parking area is utilized exclusively for four company vehicles with the two heaviest not shown in the photo. As there is not a lot of space on the property, if they put the transformer in this area there would not be enough room for their vehicles and they would be looking for a solution to those parking problems.

Mr. Lane continued that the photo also shows the location of the dumpster in front of the building. The dumpster is right on the edge of the paved section. Exhibit D shows the grass area, which is the proposed the new location for the transformer. Regarding Ms. Zerba's question about the depth, the transformer pad would be located five feet from the sidewalk with the pad six feet, eight inches in depth. Therefore, if it is five feet plus six feet, eight inches and located 15 inches from the building, that calculation is about 13 feet from the sidewalk to the building.

Mr. Lane continued that the photo of the front of the building shows a parking area, which is owned by Valvoline. Between the building and the property line there is about eight feet of space and from then on is a parking area, owned by Valvoline. On the rear is the Walgreens drive-in and there is an area along the back about four feet in depth owned by Farrar's, and then abuts the drive-in for Walgreens. Farrar's looked at all the possible alternatives where the transformer could be located. The front is the only place that exists on site that the transformer could be placed. The final slide, Exhibit E, shows the transformer in front of Antioch University of New England (AUNE), which is directly across from Farrar's. That transformer was installed by Eversource, within the edge of the public right-of-way. The requirement for the installation of transformers is that they either must be protected by bollards (the one at AUNE has two) or be fenced in. Because Farrar's transformer would be so close to the sidewalk, they are proposing that it be fenced in for the safety of anyone using the sidewalk.

Mr. Lane continued that the way the sidewalk is plowed, the snow removal is just beyond the location of where the transformer is proposed to be placed, so it would not interfere with snow removal in front of Farrar's.

Mr. Lane continued that he would go through the five criteria:

1. Granting the Variance would not be contrary to the public interest because:

Mr. Lane stated that granting the Variance would not be contrary to the public interest because it is in the public interest to keep Farrar's in business. As it has grown, their ability to continue to function and operate successfully is dependent on having a larger transformer installed that would allow them to continue in operation. The industry has evolved. There are fewer and fewer electrical contracting

companies like Farrar's in the northeast. Those that have remained have been picking up more and more types of business. Farrar's used to primarily deal with motors for ski lifts for ski areas throughout the northeast. It has evolved and now much of the work relates to the military and Navy with requirements for larger motors than what Farrar's used to do in the past.

2. *If the Variance were granted, the spirit of the Ordinance would be observed because:*

Mr. Lane stated that if the Variance were granted, the spirit of the Ordinance would be observed because it would enhance the safety of the property. The transformer would be enclosed in a fence and the dumpster would be moved into the enclosure. Under the Planning Board standards, dumpsters are supposed to be enclosed. This dumpster predates the standards and has been there for many years, not been enclosed. By creating the fenced-in area, they would enhance the appearance and bring the dumpster into compliance with the Planning Board standards.

3. *Granting the Variance would do substantial justice because:*

Mr. Lane stated that granting the Variance would do substantial justice because there is no other location on the site. They explored every possible alternative. The roof will not support the weight. If the parking lot area were used for the transformer it would create additional problems with the loss of parking spaces. The proposed location has been reviewed and approved by Eversource. All of the electrical lines for the transformer would be underground.

4. *If the Variance were granted, the values of the surrounding properties would not be diminished because:*

Mr. Lane stated that if the Variance were granted, the values of the surrounding properties would not be diminished because this is not a residential area. It is in an area with businesses plus AUNE. Farrar's is abutted by an automobile service station and kitty-corner to a gas station. The value of the surrounding properties would not be at all affected. There is already a transformer out there for AUNE.

5) *Unnecessary Hardship*

A) *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:*

i. *No fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property because:*

ii. *The proposed use is a reasonable one because:*

B) *Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

Mr. Lane stated that there is a relationship between the hardship and the size of the property. The building has been there since 1947. The property will not get any bigger. They tried to negotiate with surrounding properties and there is no possibility of enlarging the property. It is in the public interest to use the property in a safe manner to protect the public from any contact with the transformer and be able to continue operation. The transformer is necessary, with no other location available. The special condition that relates to this property is its limited size. When Farrar's relocated to this location, the only other building that existed there was the furniture company, which is now AUNE. With the property size, Farrar's options are limited.

Chair Gorman thanked Mr. Lane and opened it up to questions.

Mr. Hoppock asked what the dimensions of the new transformer are versus the old one across the street. Mr. Lane replied that that the current one across the street is about two feet by three feet. The dimensions of the new one are 7'8" by 6'8". That is more than double the size of the existing one.

Ms. Zerba asked if the pad would be the same size as the transformer. Mr. Lane replied yes. Ms. Zerba asked if they considered placing the pad and fence closer to where the dumpster currently is located, which would allow them to keep the green space where the picnic table is now. Mr. Lane replied that they considered moving it further down Avon Street at that section of the building. He continued that the problem is they have to be able to get access into that area of the building. As shown in Exhibit D, there is a large bay door, and right next to that, the entry door to the shop. There is not space to move it down that far. Ms. Zerba asked if it could be close to the pavement farther down. Mr. Lane replied that if they did that there would be no place for the dumpster. In order to have access to the dumpster they have to have the dumpster next to the driveway.

Mr. Welsh stated that Exhibit D shows the location of the pad and transformer and the fenced-in area, with the trees behind it. He continued that it looks like the trees would be preserved. Mr. Lane replied that that is correct; the trees would not be impacted.

Ms. Taylor asked what the dimension is of the grassed-in area. Mr. Lane replied that it is about 30 feet long. Ms. Taylor inquired about the dotted line in one of the drawings. Mr. Lane replied that the dotted line is the proposed fenced-in area. Ms. Taylor asked if the small, solid line within the dotted lines is the transformer, given they also want to put the dumpster in, why do they need all of that area fenced in? Why obliterate all that green space for something that is six by eight feet? Mr. Lane replied that the green space would mostly remain. He continued that all that is being eliminated is the part where the dumpster and pad will be located. The green space will be behind the fence. They extended the fenced area so they could get the dumpster in and it could be emptied. Ms. Taylor replied that it seems like that is a whole lot of difference between the transformer and what they are proposing to do with the fenced-in area.

Ms. Taylor stated that Mr. Lane said there is no residential in this area, and maybe he was not aware that a few months back the ZBA approved a Variance so that an old house two parcels down could resume residential use. Mr. Lane replied that they spoke with that owner within the last couple of weeks and

that person does not think she will go forward with a residential use. She wants to sell the property to Farrar's and Farrar's is not sure what they would do with it. Ms. Taylor replied that they could put the transformer there. Mr. Lane replied that it is an expensive piece of property for a transformer. He continued that they considered taking the house down and putting a parking lot there. Farrar's employees have been parking at nearby businesses because Farrar's does not have onsite parking. The property owner may change her mind again and decide to make it into a residential property but as of a couple weeks ago, that was not her intent.

Ms. Zerba asked if Farrar's intends blockade-type fencing. Mr. Lane replied that that is something the Planning Board will be reviewing. He continued that it is a solid white fence, five feet high. Ms. Zerba asked how much green space would remain. Mr. Lane replied that behind the fence all of the green space would remain, except where the pad is. Ms. Zerba asked if people walking on the sidewalk would see any green. Mr. Lane replied that yes, between the fence and the paved area will be about seven feet to the south. To the north, the fence will go up to the sidewalk.

Chair Gorman asked if it is fair to say that the drawing with the dotted line is not to scale. Mr. Lane replied yes, he drew it and can guarantee that it is not to scale. It looks like it goes down further than it actually does.

Mr. Gaudio stated that Mr. Lane said there is no room for the transformer on the north side of the building that abuts Valvoline. He continued that there is a compressor there for an air conditioning unit. He asked if there really is no space to put a transformer next to it. Mr. Lane replied that they would have to begin by cutting down all the trees, and they would rather not do that.

Chair Gorman asked if anyone else had questions. Hearing none, he asked if anyone from the public wanted to speak in favor or against stating the phone number again. Ms. Marcou stated that she and Mr. Rogers do not have any phone calls from members of the public.

Chair Gorman closed the public hearing and stated that the board will now discuss the petitions. He read ZBA 20-08 and read Zoning Ordinance Chapter 102, Article V – Supplementary Regulations, Division 4 – Accessory Uses, Sec. 102-887 – Front Setback; “No accessory building or use may occupy any part of a front setback unless the front setback extends beyond the front of the building; in such case the portion beyond the front of the building may be used.” He read ZBA 20-09, and read Zoning Ordinance Chapter 102, Article V – Supplementary Regulations, Division 1 – Generally, Section 102-791 – Basic Zone Dimensional Requirements; “Minimum front setback for the Commerce District is 20 feet.”

Chair Gorman stated that if needed, he would reopen the public hearing to ask any technical or procedural questions of Staff, the Petitioner, or the public.

The Board reviewed the criteria for ZBA 20-08:

1. *Granting the Variance would not be contrary to the public interest.*

Mr. Hoppock stated that the part he is having a problem with is that they have not received a satisfactory explanation for why the new, larger transformer cannot be placed where the old one was. He continued that speaking to the criteria generally, he does not think it presents an issue with respect to altering the essential character of the neighborhood, and notwithstanding the tight configuration, and he does not see that it threatens public health, safety, or welfare. He appreciates that they have looked at other options to rule them out but he does not think they have ruled out the across the street option.

Chair Gorman re-opened the public hearing and asked for input from Mr. Lane about why the new transformer cannot be placed where the old one is. Mr. Lane replied that the current one is on the utility pole across the street. He continued that the new transformer is more than twice the size and would not be supported on the pole. There is no physical way to put it on the pole and know that it would be supported and safe. The nature and size of it requires it to be on the ground.

Mr. Hoppock stated that Mr. Lane showed the picture of the transformer on a pad across the street, not on a pole. Mr. Lane replied that was a photo of AUNE's transformer. Farrar's will be slightly larger than that one.

Mr. Welsh stated that he had three issues to affirm to his satisfaction, and Mr. Hoppock covered two. He continued that the third is public safety. He is not usually a fan of fences but in this instance with a large transformer, he thinks the fence adds to the public interest and safety.

Chair Gorman stated that first he needs to close the public hearing again before they continue deliberations. He continued, thanking Mr. Lane for answering the question about the old transformer, and then closed public hearing.

Ms. Taylor stated that she is torn. She continued that as she stated in her earlier questioning, the dumpster as currently located is grandfathered from the current Zoning and Planning Board regulations. It seems to her that there is little relief, visually, and for the employees' picnic table. She is not sure this large fenced-in area does add to public safety, where perhaps a smaller fence surrounding the transformer would do. She is of two minds with this particular issue.

Mr. Greenwald stated that he agrees with Mr. Hoppock that it does not interfere with public health, safety, or welfare. He continued that it is in the public interest. The fence would protect the transformer and dumpster from passersby and provide a better visual appearance.

2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

Mr. Hoppock asked if they are only discussing ZBA 20-09 right now. Ms. Marcou explained that there is a mistake in the PowerPoint, which says "ZBA 20-09" but ZBA 20-08 should come first. Chair Gorman stated that he is open to discussion on this, but he thinks there might be merit to having general dialogue about both at once and then making separate motions. He asked the Board members for their input and continued that if they have no comments he would assume it is okay to move forward.

Ms. Taylor stated that the explanations are virtually identical so she does not have a problem discussing them together. She asked, regarding the voting process that if one of the members has a particular concern with one of the criteria for that particular application, can they still make that comment. Chair Gorman replied yes, that is reasonable. He continued that they will speak broadly to both applications and then at voting time, specific comments can be made.

Chair Gorman asked if there are more comments.

Mr. Hoppock stated that the “unnecessary hardship” analysis is identical on both and is as Mr. Lane says, tied to the size of the lot. He continued that he is satisfied that that is met. Chair Gorman asked if anyone else has hardship comments. Hearing none, he moved on.

3. *Granting the Variance would do substantial justice.*

Ms. Taylor stated that she again goes back to the aesthetics and balancing whether the interest of the public is truly outweighed. She continued that it is the same issue she has with not being contrary to the public interest whether or not what is being proposed - not the transformer itself but everything around it - may be a bit of overkill.

Chair Gorman asked if they have thoughts on what role the Planning Department could play in this, regarding the aesthetics.

Mr. Welsh stated that he used to be on the Planning Board and stated that Board will oversee the construction of the fence, the materials, the appearance, and maybe the dimensions. He continued that this Board is approving the use of a fence and a footprint with the Planning Board to give specifics.

Ms. Taylor stated that her concern is not the footprint of the transformer; it is the footprint of the overall development in the context of where it is located. She continued that she is not sure if this is required to go to the Planning Board.

Chair Gorman replied that he does not know, he would reopen the public hearing to hear from Mr. Rogers.

Mr. Rogers stated that the size of the project might not require it to go to the Planning Board. He continued that there are certain size restrictions that allow an application to be handled administratively by the Community Development Director and this might fall into that.

Chair Gorman asked Mr. Rogers that given the size and nature of the transformer and potential need for repairs and service, as well as the dumpster needing to be screened (required by Zoning), is it possible that the size of that fence or the size of the area being confined is required. He knows it is not allowable to have obstructions around electrical equipment. Mr. Rogers replied that yes, certain clearances need to be maintained. He continued stating the example that particularly in the front, there needs to be enough

clearance so someone can safely open the panels and work in a space that is not too confined. Those required clearances might at least be dictating the proposed depth of this area, although probably not the length.

Chair thanked Mr. Rogers and closed the public hearing again.

4. *If the Variance were granted, the values of the surrounding properties would not be diminished.*

Mr. Welsh stated that this is consistent with the uses in the surrounding area and it would not negatively affect the property values. In fact, it would keep this business thriving, which relatively improves property values in the area.

Chair Gorman asked if anyone else had more to say about the criteria. Hearing no comments, he requested a motion.

Mr. Hoppock made the motion to approve ZBA 20-08, which Mr. Welsh seconded.

The Board voted on the findings of fact, via a roll call vote.

1. *Granting the Variance would not be contrary to the public interest.*

Passed with a vote of 5-0.

2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

Passed with a vote of 5-0.

3. *Granting the Variance would do substantial justice.*

Passed with a vote of 4-1. Ms. Taylor was opposed.

4. *If the Variance were granted, the values of the surrounding properties would not be diminished.*

Passed with a vote of 5-0.

5. *Unnecessary Hardship*

A) *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:*

- iii. *No fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property.*
- iv. *The proposed use is a reasonable one.*

5. A) Passed with a vote of 5-0.

The motion to approve ZBA 20-08 passed with a vote of 4-1, with Ms. Taylor opposed.

Mr. Hoppock made a motion to approve ZBA 20-09. Mr. Welsh seconded the motion.

The Board voted on the findings of fact, via roll call vote.

1. Granting the Variance would not be contrary to the public interest.

Passed with a vote of 5-0.

2. If the Variance were granted, the spirit of the Ordinance would be observed.

Passed with a vote of 5-0.

3. Granting the Variance would do substantial justice.

Passed with a vote of 5-0.

4. If the Variance were granted, the values of the surrounding properties would not be diminished.

Passed with a vote of 5-0.

5. Unnecessary Hardship

A) 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:

v. No fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property.

vi. The proposed use is a reasonable one.

5. A) passed with a vote of 5-0.

The motion to approve ZBA 20-09 passed with a vote of 5-0.

5) New Business

Mr. Rogers reported that there is no new business. Mr. Welsh thanked staff and Chair Gorman for all of their hard work. Mr. Hoppock stated that he agrees and is very impressed. Mr. Greenwald agreed and praised Chair Gorman and staff. Chair Gorman thanked everyone as well.

6) Communications and Miscellaneous

- 7) **Non-Public Session (if required)**
- 8) **Adjournment**

There being no further business, Chair Gorman adjourned the meeting at 7:52 PM.

Respectfully submitted by,
Britta Reida, Minute Taker
May 9, 2020

Edits submitted by
Corinne Marcou, Zoning Clerk
May 19, 2020