**NEWMARKET ZONING BOARD OF ADJUSTMENT MEETING**

**JANUARY 14, 2019**

**MINUTES**

Present: Chris Hawkins (Chairman), Bob Daigle (Vice Chairman), Wayne Rosa, Steve Minutelli (Alternate), Richard Shelton (Alternate)

Absent: James Drago (excused)

**Agenda Item #1 - Pledge of Allegiance**

**Agenda Item #2 - Review & Approval of Minutes: 11/26/18 & 12/17/18**

***11/26/18***

**Action**

**Motion: Richard Shelton made a motion to approve the minutes of the meeting**

**Second: Steve Minutelli**

**Vote: Bob Daigle and Wayne Rosa abstained due to absence**

**All others in favor**

Chairman Hawkins appointed Steve Minutelli and Richard Shelton to sit on the Board as full members for this meeting.

**12/17/18**

**Action**

**Motion: Richard Shelton made a motion to approve the minutes**

**Second: Steve Minutelli**

**Vote: All in favor**

**Agenda Item #3 - Regular Business**

**Hersey Lane LLC – Continuation of a public hearing for an application for a Variance reference Section 32-56 Table of Permitted Uses and a Variance reference Section 32-201(1) General Requirements of the Newmarket Zoning Ordinance, to permit duplex residential use in an open space subdivision in the R2 Zone, in place of single family homes. The property is located at 77 Hersey Lane, Tax Map R4, Lot 3, R2 Zone. \*The applicant also requests a Variance reference Section 32-201(2)(d) to allow a 30-foot separation for the proposed duplex structures.**

Wayne Rosa recused himself from the application. Chairman Hawkins reaffirmed Richard Shelton and Steve Minutelli would sit as full Board members for this application.

Chairman Hawkins explained to the applicant there were four sitting Board members this evening and five members normally sit for an application. Three affirmative votes were needed for approval. The applicant could choose to wait for a five member board. The applicant chose to proceed.

Alexx Monastiero was the applicant’s representative. Chairman Hawkins stated the Board members had read everything in her submittal. This was her opportunity to tell the Board why she should get the variances. Ms. Monastiero asked if she should summarize or read through the criteria. Chairman Hawkins stated she could summarize and take it as the Board having read the material. If there is anything she would like to emphasize or add, this was her opportunity.

Alexx Monastiero gave some background on the parcel. It is a 12.8 acre parcel off of the Class VI portion of Hersey Lane, next to Apple Way and Pear Tree Lane, where all of those condos are. When looking at what to do with this parcel, they came up with a number of concepts. Some were conventional and some were conservation subdivisions. As part of that process, they went to the Planning Board a few months ago and asked for their input on what they would like to see there. At that meeting, they discussed, in a conceptual format, some of the ideas without the Board looking at any specific designs. Their feedback was the Board would support a variance and there was a consensus that duplexes would be a good thing. That is a partial quote. After talking to them and going through many of the points contained in this application, the Planning Board agreed this would be a good thing on this parcel. She showed, on a plan, where fourplexes were located and where open space and single family homes currently were. The majority of the surrounding land is in conservation. This lot is in the middle.

She stated, with the Planning Board’s support, they drafted this application. This parcel is unique, as it has frontage on a Class VI road. It is a large parcel for this area, almost thirteen acres. It is surrounded by fourplexes and is almost zoned out of the fourplex area. That area is primarily condos and conservation land. This gives them a unique opportunity to conserve as much land as possible and connect to the other open space land. If they did a conventional subdivision, it would take up all of the land and not allow for any conservation. She showed a plan indicating that point. If they did duplexes, it would preserve a little over nine acres of open space land, which allows them to connect the open space corridor in that area. She showed a plan indicating that. It would be a benefit to do this. The RSAs and Master Plan support it. They want infill development and this parcel has exactly that. She read from the Master Plan, “Encourage compact and cluster development, which preserves large areas of open space for the protection of wildlife habitat, environmental resources, and public enjoyment.” Additionally, this subdivision will have sidewalks, water, and sewer and would provide good middle ground housing.

***Chairman Hawkins opened the public hearing.***

A gentleman in the audience asked how many units would be there. Alexx Monastiero stated fourteen.

There were no more public comments.

***Chairman Hawkins closed the public hearing.***

Bob Daigle stated he had looked at the residential open space design regulations. He asked how many units can go in there for a regular residential open space design. Alexx Monastiero stated it depends. They have a yield plan with thirteen lots. When you go to the open space design, there are certain allowances for density. The reason they are doing duplexes rather than single family is because it allows for the maximum amount of open space to be preserved. It is about 71% preserved open space with the duplexes. With single family housing, it would create more sprawl, the road would have to be longer and would create more road frontage. Bob Daigle asked if this had gone to Planning Board. He stated the way he reads this is that it generally goes to the Planning Board first and gets approval for the open space design. Alexx Monastiero stated he was putting the cart before the horse. Duplexes are not allowed in the R2 zone, so they could not go to the Planning Board and request a duplex open space design. Also, duplexes are not allowed in an open space subdivision. So they need relief from the Zoning Board. That is why they were here. If they get that approval tonight, they will go to the Planning Board with an application for an open space design with duplexes. If they do not get approval tonight, they will go to the Planning Board with some sort of single family development, either conventional or open space.

Diane Hardy stated they do have to provide density calculations on how the applicant came up with the numbers. As part of the open space review, the first step is to determine, not only whether it is feasible to do a single family development, but what the actual figures are following the formulas that are in the zoning ordinance and the subdivision review regulations. So they need to subtract the poorly drained and very poorly drained soils, steep slopes, any utilities running through it, there is a 10% factor to account for utilities and roadways, and with that information you can determine what the requirements are for the amount of open space and density and so forth. That is part and parcel of that analysis and review. Alexx Monastiero stated they have a conceptual yield plan. She clarified that it has not been reviewed by the Planning Board. Chairman Hawkins stated he was wondering whether what they were presenting it as a yield plan had not been vetted. Just looking at it, he can see some incredible steep contours.

(There were Channel 13 technical difficulties here for about one minute. No video or audio.)

Bob Daigle stated there were a lot of steep slopes that reduce the buildable area, as well as a whole bunch of other things. He stated she is telling the Board fourteen lots, but he didn’t know, it might be eight.

Diane Hardy asked if they took out wetlands, as well. Alexx Monastiero stated they have thirteen lots on the yield plan. They did take out the wetlands and have the correct amount of buildable area. It has not been approved by the Planning Board. They need the Zoning Board approval to allow duplexes to do this. Bob Daigle stated he was saying that regardless of the configuration if you have twelve or fourteen lots, once the Planning Board has gone through and reviewed the numbers and verified they are correct, then that would be the time to come in and say they have approval for twelve lots and want to come in with duplexes.

Alexx Monastiero stated they could go and have the Planning Board approve the yield plan equation. Diane Hardy stated it was not just approving the equation. It is determining the number of units and amount of open space to see if it meets the requirements, so it is an eligible project. Bob Daigle stated he would like to have this reviewed more, before he makes a final determination. In general concept, he could see himself supporting it, but right now it is premature.

Richard Shelton stated he looks at it differently. They were not approving a fourteen unit cluster (open space) development. They are approving whether they can do it. The Planning Board will determine what they can put on it later on. This Board can’t tell them how many lots they can put on it. The applicant is showing them they can put thirteen. He stated he was on the Conservation Commission for many years and he is a conservationist. He would like to see this be an open space development. All of that surrounding land is open space. This little lot in the middle is a connector between all of those parcels. He stated this Board should approve the open space development. This Board is not approving what is going there, this Board is approving to have an open space development. Diane Hardy stated this Board is approving that they can have duplexes within this development. This Board is not approving the open space development. This Board is approving the location of duplexes in this subdivision, because the regulations currently only allow single family homes.

Richard Shelton stated he had written up something he would like to read, before this is done.

Chairman Hawkins stated the difficulty he is having is part of this Board’s responsibility is to assess whether and to what extent the proposal meets the spirit of the ordinance, is consistent with the public interest and whether there is a hardship, among other things. He can’t tell the degree of consistency or inconsistency. He does not have any idea of what the final configuration will be. Richard Shelton stated it is none of this board’s business. Chairman Hawkins the application is to allow the construction of an unknown number of duplexes. Richard Shelton said it is in a cluster (open space) development. Chairman Hawkins stated he did not know if it would be fourteen or fifty. Richard Shelton stated that was immaterial. Chairman Hawkins disagreed. Richard Shelton stated the board is not approving the amount of duplexes. The board is approving whether they can do it. They need a variance before they can go to the Planning Board. Chairman Hawkins stated he understood what Richard Shelton is saying. He thinks they need to assess that, if there is fifty, the degree to which the intent and spirit of the ordinance is being violated. Fifty is much more significant than if it is ten. Part of the analysis is to have an idea of what it is they are looking at here. They are asking for the approval of the concept of an unknown number of duplexes on a piece of property. Richard Shelton asked what was wrong with that. Chairman Hawkins stated it did not give him enough information to make a decision. Richard Shelton stated he did not think the applicant really knew. Diane Hardy stated they are asking the applicant to go back and do the homework, so they do know. Chairman Hawkins stated, conceptually, to approve an unknown number of duplexes when there is not enough information to assess the degree and extent of which what is being proposed is inconsistent with the ordinance, is contrary to the public interest, it may have an impact on surrounding property values. They do not have enough information. He has never heard of someone coming in with an unknown number of duplexes on a piece of property. To his knowledge, they have never had an application like that. They have had at least some kind of concrete indication of what it is they are looking at and, at this point, they have none. It is within the applicant’s power to provide this information and it has not been provided. He stated Mr. Shelton was saying they can’t get that information without going back to the Planning Board. He can’t believe there is not some middle ground here, where some reasonable amount of information can be provided, so they understand exactly what this application is. That is his concern. Richard Shelton stated he did not agree. His only issue was they came in looking for a duplex subdivision, with open space. He is not looking at fourteen units. He is looking at whether the board can give them a variance to do duplexes or not.

Bob Daigle stated, when he read through this, with the definitions for an open space development, it states you need a community homeowners association, you have to do calculations, and there is a whole list of things. He asked if the duplexes would be condos or individually owned or owned by one person. There is a lot here. He thinks the concept works, but he is seeing holes he does not have answers for and it makes him leery to say they will give them duplexes right off. Alexx Monastiero stated part of what he is saying rings true and she understood where they were coming from. Even if they get a yield plan and equations done, they (the ZBA) were going to tell them the maximum amount of units that they can put on the lot. Right now she is saying the maximum amount of units they can fit on this lot is fourteen, by her calculations. When they go through Planning Board, it could be twelve. It is still only going to give you the maximum amount of units they are allowed to have. Then she will come back and get this board’s approval, with up to twelve or fourteen units and then go through the Planning Board process and they will say they would like it to be slightly different. It could be fourteen or sixteen, by the time they are done with the process. Just because they approve a yield plan that says it could be fourteen or twelve units, it does not mean it will be that many. On the condo association (homeowners association), it is required, so there will be one. Right now they are showing fee simple lots, with a duplex on each. They will share one lot between two owners. There would be a homeowners association to take care of the open space land or that land would go to a conservation organization.

Bob Daigle stated he agreed with Richard Shelton that is doesn’t matter about the number of lots in determining duplexes or triplexes or single family homes. When he was reading the documents, there seemed to be a number of elements that go into this that have not been fleshed out. Alexx Monastiero stated the Planning Board process will take care of most of those problems. She is sure they will be diligent. Bob Daigle stated without those elements before them, they don’t have the necessary information to look at. Alexx Monastiero stated, when they go through the Planning Board process spending tens of thousands of dollars on engineering for single family lots and then, when they get all of that information, they come to the Zoning Board and try for duplexes. It doesn’t make much sense to do that. Bob Daigle stated they are going to spend the same amount on engineering. Right now, they have a concept plan, but they are going to have to do the math. The math is what talks about the amount of steep slopes and wetlands and what can be used in the calculations. Alexx Monastiero stated the Planning Board is still going to say they can have a maximum of “x” number of duplexes. Right now, her engineer says they can have fourteen maximum. The Planning Board process may end up with ten. At that stage, even if she comes back to the Zoning Board, even if it is a maximum of ten, it could be eight. Bob Daigle asked if it was nine units, will they come back with duplexes and a triplex. Alexx Monastiero stated no. They would do a single family, with four duplexes. They are only asking for duplexes. Bob Daigle stated he hears what Richard Shelton is saying and he is torn.

Richard Shelton stated he would like to read what he had written for the meeting. He read:

*The applicant's property is in the R2 district that shall be to provide for an area of transition between the low density R1 residential district and the high density R4 district. As this property in its location, that to the east, also in the R2 Zone, is a highly developed area with three multi-family fourplexes, additional multifamily buildings and additional 3 open space lots, to the south and west a conservation easement with 3000 +/— feet along the Piscassic River to the Nature Conservancy and to the North, Hersey Lane a Class VI road. As this property is surrounded by a high density development also in the R2 Zone with open space lots as well as The Nature Conservancy land and fronting on a Class VI road, it is indeed unique in its setting. By allowing this parcel of 12+ acres to permit duplex residential use in an open space subdivision, in place of single family homes, will allow for more open space and remain consistent with other development in the area.*

*The variance criteria presented by the applicant is reasonable and factual that,*

*1) Will not be contrary to the public interest.*

*2) The spirit of the ordinance will be observed in keeping with the goals of the master plan.*

*3) Substantial justice will be done as it will allow a better utilization of the land resulting in land that will add to the areas open space.*

*4) The values of surrounding properties will not be diminished as it is consistent with the new development along Hersey Lane.*

*5) Denial of the variance would result in unnecessary hardship as to deny the variance to allow for a duplex development and maintaining open space in an open space subdivision the property of 12 + acres although it can still be developed with single family homes will result in the loss of valuable open space and to permit duplex residential use in an open space subdivision thereby maintaining the open space is much greater and the proposed use is reasonable as it provides for conformity, compatibility and similarity to surrounding properties.*

*Under Simplex standard: The prior requirement for unnecessary hardship the applicant show no available use without a variance.*

*Under the new standard, applicants for a variance may establish unnecessary hardship by proof that: (a) a zoning restriction as applied to their property interferes with their reasonable use of the property, considering the unique setting of the property in its environment; (b) no fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restrictions on a property; (c) the variance would not injure the public or private rights of others.*

*The hardship under Simplex, due to the special conditions of the property, the request is reasonable. The distinction must be unique to other properties in the area. Surrounding properties in the area also in the R2 Zone have multi-family, open space and conservancy land which leaves this property unique in its setting. As this property is an open space subdivision the hardship will be, by not allowing the applicants request to develop this property as requested, will result in the loss of valuable open space. As this property will provide passive recreation as well as wildlife habitat areas, connecting to other open space parcels that are adjacent to the applicants, thereby the loss of valuable open space to development is much greater, the applicant's burden has been met.*

*The development won’t interfere with the orderly development of the area that it will not have an unreasonable adverse effect on the material environment, public health and safety and that will better serve the public interest in maintaining open space,*

*I will make a motion to approve the variances requested by Hersey Lane LLC, referencing Section 32—56 Table of Permitted Uses, Section 332—201(1) General Requirements of the Newmarket Zoning Ordinance to permit duplex residential use in an open space subdivision in the R2 Zone in place of single family homes and Section 32-201(2)(D) to allow a 30-foot separation for the proposed duplex structures to remain consistent that are a permitted use as shown under (1—3), 30 foot structural separation for all single—family structures within the development and that the criteria as submitted by the applicant be included in our decision.*

Richard Shelton asked if he should make a formal motion. Chairman Hawkins asked if he would hold off, as there were more questions.

Richard Shelton stated his statement was his outlook on the whole project. He was not telling them how many duplexes to put in. All they were doing was granting the variance to move forward to the Planning Board.

Chairman Hawkins stated, as he understands it, the unique features of the property are frontage on a Class VI road and it is a fourteen acre parcel. He asked what the other unique characteristics of the property were that made it different from other properties in that area. Alexx Monastiero stated it was zoned out. It is the “donut hole” in the donut. Everything around it is multifamily for housing and on the other side everything is open space. It can’t fit in and, unless they provide some sort of transitional housing, it won’t fit in. Even fourplexes would fit in or all open space would fit in. In order to develop this property, it needs to have a transitional use that would work well between both of those uses. Additionally, it cannot meet the goal of the R2 zone. A single family development surrounded by all multi-families does not meet the intent of the R2 zone, which was to transition and create single family development. If it is all surrounded by fourplexes, then purpose of the R2 zone is not met here. Whether they have ten or one duplex or ten single families or one, if it does not fit in with the surrounding neighborhood, it does not fit in. It does not meet the purpose of the zoning. This is an odd parcel. It is unique and it serves a purpose in connecting open space or they can do a regular subdivision and use the whole parcel and not conserve any open space. It serves a unique purpose in this neighborhood that is already all built out.

Chairman Hawkins stated he was not seeing the connection between what she said and the need to build duplexes on this property. What he hears her saying is having this zoned R2 with single family only does not make any sense. Alexx Monastiero stated that was one of her points. Chairman Hawkins stated that is what the regulations say. Alexx Monastiero stated what she was trying to say was, by condensing the development on the smallest portion of the lot, which is what duplexes allow them to do, it allows them to conserve the most amount of open space, it allows the open space corridors to be connected. Chairman Hawkins stated he hears what she is saying, but they are talking past each other. As a matter of policy, it might make more sense if the ordinance provided what they want to do, but currently it does not. In order to allow that to happen, they have to find, among other things, that there is some unique feature on the property. Not that the ordinance does not make sense, because lots of times applications come in and they have had people come in looking for accessory apartments and they say it makes sense on this parcel, but the ordinance does not allow it. He was struggling in trying to understand very clearly what the unique features of the property were, aside from the fact that we may think that the Zoning Ordinance just doesn’t make sense and it is more consistent to allow this. That sounds like substituting the Board’s judgement for what is a better overall plan from what the ordinance says. The Board’s task is slightly different. It is to try and identify, among other things, some unique feature of this property, not its place or surrounding environment. That is a decision that was made when the ordinance got passed. It is not the Board’s job to decide what the ordinance should say or might say or is supposed to say. He said to make sure she was very clear on exactly why they were entitled to a variance based on some unique condition of the property.

Alexx Monastiero stated it was unique, because it is a large parcel in town, close to town entities, adjacent to Town water and sewer, adjacent to Town sidewalks, but the most unique thing about it is that it could serve a future purpose, by conserving the open space. Chairman Hawkins stated that was where he was having trouble. Lots of parcels in town have water and sewer. Alexx Monastiero stated it has wetlands connected to other wetlands that will not be as effectively conserved if they develop in a sprawl way. It has steep slope and wetlands that are valuable to the surrounding area. If everything around it was completely developed and the wetlands were wiped out and were not connected, that would be a different thing. It contains viable resources that should be conserved and won’t be conserved.

Chairman Hawkins stated lots of parcels have steep slopes. He understands there is a lot of multifamily residential, all of which were grandfathered when the current ordinance was adopted in 1996. There are a number of single family residences up there, too, on Hersey Lane, the top of Bennett Way, along Ladyslipper Drive and Durell Woods. He was struggling with that and frontage on a Class VI road. He asked how this lead him to duplexes. Alexx Monastiero stated the Class VI road will be upgraded and will become a Town road. Diane Hardy stated if the Town approves it.

Chairman Hawkins stated he was struggling with public interest and spirit of the ordinance, as well. Alexx Monastiero stated the spirit of the ordinance criterion was, for her, pretty easy. She read from her submittal. Said parcel meets the goals of the Master Plan, which seeks to encourage infill development within established neighborhoods that is compatible with the existing density, land uses, and in scale with surrounding areas, and adequately supported by public utilities and the existing transportation system and plan for development in a manner that maximizes the use of existing infrastructure and reduces the need for new roads, services, and facilities. Said parcel accomplishes the goals of the Master Plan above, because it is adjacent to Town water and sewer, the Town sidewalk system and allows for the least amount of road with the most preservation of open space. Additionally, the spirit of the ordinance would be upheld, if the variance were granted, because it provides a compatible transition of duplexes between the allowed use of single family and the existing surrounding multi-family development therefore the spirit of the ordinance is upheld. She stated the spirit of the ordinance it goes with exactly what the Master Plan says. They want infill development where there is already development.

Diane Hardy stated, as a Planner, she really had difficulties looking at this and saying this is infill development. Infill development is what was done on Grape Street. There was an existing neighborhood, a development came in, which was completely surrounded by very, very similar type housing. That is infill development. This area in question is undeveloped. It is on a Class VI road that does not meet the Town’s standards and the Town does not maintain it. You see that parcel, on the plan, is surrounded on three sides by open space. She has a really hard time with this notion that this is infill development. She also stated that she was glad the point about grandfathering came up, because all of this so-called “higher density development” that is being referred to was all grandfathered, developed in 1987, by Mr. Cheney, for whom Ms. Monastiero works. If anything, this is a self-created hardship. Mr. Cheney was the one who developed all of those developments there. She has a hard time with the notion there is a hardship here. She also stated the road does have to be upgraded. If you are going to develop, they would have to create legal frontage. Those are Planning Board decisions and the Town Council. There will have to be liability waivers. She is very familiar with that process. It is not just going to the Planning Board, it is also getting approval to upgrade the road and provide adequate emergency services and a turn around and so forth. Alexx Monastiero stated she tried to get that before this meeting. She had requested to meet with Town Council. She was told by the Town Administrator that she needed to meet with him and it has not happened.

Chairman Hawkins stated he understood what the Master Plan said. The Master Plan does not override what the ordinance says. This Board has to deal with what the ordinance says, because, when they start talking about the Master Plan, it takes the Board very quickly outside of the very limited jurisdiction of the Zoning Board. The Zoning Board’s job is not to make policy decisions about what is a good or bad development or idea. There are merits to the idea she had presented. The problem, again, is, if the ordinance allows you to do it, you would not have to be here. The Board has to deal with the ordinance, whether the Board members think the project is a good idea or bad. It doesn’t really matter. The ordinance says single family. The powers that be made that in 1996. He did not fault Mr. Cheney for taking advantage of the regulations, as they existed in 1986 or whenever they were, but the ordinance is the ordinance. For good, bad or indifferent, the Board has to live with what it is. He is struggling with the hardship criterion, as they had discussed. Whether the Board thinks the ordinance is a good idea or bad, whether the development is good or bad, it is not the Board’s decision to make. It is inconsistent with the spirit of the ordinance. Part of the purpose of the density ordinance is to discourage overcrowding and density of population. The people who made this ordinance may very well have concluded that there were enough approvals for multifamily residential in that area and they wanted to slow that process down. That is the intent and the spirit of the ordinance. You can read it that way. It is very consistent with the statutes and with case law. He is thinking specifically of the Nine A, LLC, v. Town of Chesterfield. That is a 2008 case and is very similar in a lot of ways. The Supreme Court found it was perfectly in discretion and ability of the Board, and it was a Superior Court case, as well, to say that the fact that there are a bunch of grandfathered uses in the area is not in itself sufficient reason to override the ordinance, if it says something different. There may have been a very good reason for the ordinance to be the way it is. He is trying to see if there was enough there to persuade him that the criteria for a variance have been met, aside from whether the proposal makes sense and preserves open space and does all of those good and valuable things. It sounds like it is a good argument to change the ordinance and that has been done in other instances. He is trying to confine it to the Board’s limited jurisdiction. He wanted to say that, so the applicant can address it and respond to try to persuade him to think differently.

Alexx Monastiero stated, if they don’t consider the open space in the surrounding parcels, she agrees with him there is not much to go on here. If you can’t consider the future development and conservation of this open space, they are fine making some sort of single family subdivision, but it will not preserve the most open space. Chairman Hawkins stated he did not disagree. That sounds like a great argument to change the ordinance. It is a policy argument.

Bob Daigle asked if the green areas on the plan the applicant brought in were open space. Alexx Monastiero stated it was a combination of conservation land and open space. Bob Daigle asked about the other areas and Alexx Monastiero verified the color coding. He stated whatever they could do to conserve open space, he was all for it. He was torn between Chairman Hawkins and Richard Shelton. There are procedural issues they are dealing with, but the concept is appropriate. It still has to go through the whole Planning Board process. Chairman Hawkins stated he hears what he is saying and that is an argument for letting it rip and see what happens and not do our job. Bob Daigle stated he could see one of the aspects that makes this lot unique warranting his consideration is its connectivity to the open space and conservation land. He thought it made it different from other lots in the area.

Chairman Hawkins stated they were, again, getting into this area of policy and making decisions on what the Board members think is good development. Whether the ordinance makes sense or not, it is the ordinance. It is what the Board is stuck with.

The question was asked how the Zoning Office preserves exhibits in an application. Diane Hardy stated a copy is kept in the file. Alexx Monastiero stated she was happy to leave a copy of the plan she drew up herself. Diane Hardy asked for a copy of her yield plan, also.

Alexx Monastiero stated they will not build on wetlands. They could conserve them in a homeowners association and give the biggest buffer possible. They would connect to the other wetlands in the area and that is an advantage. That makes it different and meets the goals of the ordinance.

Bob Daigle asked to see the yield plan. Alexx Monastiero stated those were all standard lots. Diane Hardy stated they are conventional lots. There are thirteen lots. Diane Hardy stated the Planning Board makes sure this is a viable plan that could be developed under the Town’s regulations. A lot that was 100% wetlands is not a viable lot and that would not count.

Steve Minutelli stated he has been thinking about the hardship criteria. When he read the application, what he got out of it was it was on a Class VI road and was the last lot developed. Granted there has been more detail provided this evening. He has heard talk about wetlands and steep slopes. Chairman Hawkins stated knowing what he knows about the area, because he lives quite close to this, wetlands and steep slopes are characteristics of the area. Bob Daigle stated that was not the hardship. He thought proximity to other natural resources in the area plays more of a hardship on this parcel and the intent of trying to keep open space and green space is more of a hardship than the actual soils are. Steve Minutelli stated he was trying to understand what the special condition of the property is for hardship. Bob Daigle stated it was the fact that it is a connector to a number of green spaces. Richard Shelton stated that was definitely a fair statement. Diane Hardy stated it does not necessitate duplexes.

Chairman Hawkins asked if there were other forms of development that could also preserve open space. Diane Hardy stated there were. Richard Shelton stated they came in for duplex development to protect open space. Obviously, they can deny it and say build on it and now there is no open space. They can utilize probably 80% of that. Diane Hardy stated they can do a single family open space subdivision. Chairman Hawkins stated Richard Shelton was holding this up as a bad outcome. You don’t really know. Richard Shelton stated neither does Chairman Hawkins. They will never know until it goes to the Planning Board. Chairman Hawkins stated that was exactly his point. Richard Shelton stated it can’t go to the Planning Board unless they get relief from the Board. Chairman Hawkins stated he doesn’t know how the Board can do its job on this very high conceptual level, with insufficient information to make the decisions the Board needs to make.

Bob Daigle asked for the minimum lot size for single family homes. Alexx Monastiero stated there are setbacks for open space subdivisions. Bob Daigle asked if it would be similar to the lots for duplexes. Alexx Monastiero stated it was about a 15% less savings than open space, but it is do-able and would still preserve open space in accordance to concentrated subdivision. The conservation subdivision requires they conserve a certain amount of open space. If they did single families, they would still have to conserve open space, but it would not be 71%. There would be more sprawl. Duplexes allow them to preserve the most amount of open space. There are still other options to preserve open space.

Chairman Hawkins stated these are really good arguments to change the ordinance to be different than it is. He feels like this Board is being asked to sit as some kind of super Planning Board and make a decision on what is a good form of development for this property without real connections to the Zoning Board’s job. He did not disagree that preserving open space is a darn good goal and objective. Richard Shelton stated it was a priority. Chairman Hawkins stated he sees it as, fundamentally, a task to change the ordinance to be different from what it says. That is not the Zoning Board’s job.

Bob Daigle stated he did not think they needed to change the R2 zone. There is enough here to say that on this specific lot this concept makes sense. He felt that was in the Zoning Board’s purview. If the applicant came in with hard numbers or gotten feedback from the Planning Board, it would have made this decision easier. Alexx Monastiero stated they did come in with hard numbers. Diane Hardy also stated they did. Alexx Monastiero stated they had gone to the Planning Board with these conceptual designs and they said they would support a variance and duplexes would be a good thing. Diane Hardy stated the Planning Board is not the Zoning Board and does not know the five criteria. However, that point being made, that maybe it is grounds for a zoning change, the Town is going through a process where they are looking at making some zoning changes or hiring a consultant. Maybe this could be an area where it is changed to allow duplexes, but that is the role of the Planning Board to make policy changes and then it goes to the Town Council, who ultimately makes the decision.

Bob Daigle said he thinks this is a spot zoning thing. Diane Hardy stated that is a very good point, you can’t do it on one lot. Bob Daigle stated this works toward the hardship. Chairman Hawkins stated he did not see that. Bob Daigle stated that it is one lot surrounded by open space and others. Chairman Hawkins stated, when the decision was made to change the ordinance to its current form, all of that was known. Again, he felt like they were substituting their judgement of what a good form of development for this property would be. Richard Shelton stated that was why they were here. Chairman Hawkins stated he disagreed. That is what the Planning Board does. The Planning Board decides what the best form of development for a particular piece of property is. The Zoning Board looks at some very specific criteria and very specific evidence and very specific things and then they apply that. The Zoning Board has to respect the ordinance, as it is written, regardless of whether the Zoning Board thinks it is a good or bad idea. He stated they were being asked to sit as a super Planning Board and make a decision about what is or is not a good form of development for this property. Richard Shelton asked what he thought was a good development for this property. Chairman Hawkins stated it was not his business to decide that. Richard Shelton stated it was not his business either, but he would like to protect open space. Chairman Hawkins stated the people who created the ordinance in its current form wanted to protect open space, as well. Presumably, they were aware of the Master Plan and everything else and they made a policy decision, for whatever reason, possibly to prevent further multifamily development in this area considering how many approvals have already been granted. Richard Shelton stated everything was grandfathered. Chairman Hawkins stated that is exactly his point. Diane Hardy stated people weren’t happy with the scale and type of development occurring and that is why it was changed.

Richard Shelton stated this was a privately owned lot for years. Chairman Hawkins stated he hears what he is saying and everything he is saying circles back. This Board is just being asked to override what the ordinance says. Richard Shelton stated that was their duty. If they met the criteria, they would not be here. Chairman Hawkins stated no. If they met the ordinance, they would not be here. He did not see public interest, he did not see spirit of the ordinance and he did not see hardship, in a sense of some condition of the property that makes it unique relative to other properties in the area. Whether the development turns out to be good or bad is a problem for the Planning Board, not for this Board. It was not for him to decide what sensible development is for this property. That is the Planning Board’s job. The Zoning Board’s job is to look at the ordinance, look at the criteria for the variance, look at the evidence and make a decision on whether the applicant has satisfied those criteria. That has not happened. His concern was that the Zoning Board was getting on a slippery slope of saying if duplex development makes more sense, therefore, we should approve it. Then they are just gutting the ordinance and not doing their job. To him, this is a strong argument to change the ordinance, but not an argument to grant the variance. Richard Shelton stated he was in favor of this concept. He stated evidently, Chairman Hawkins is against it. Either they should decide whether to have a motion or continue the meeting. Chairman Hawkins stated he was free to make a motion, if he chose to do so.

**Action**

**Motion: Richard Shelton made a motion to approve the variance requested by Hersey Lane, LLC, reference Section 32-56 Table of Permitted Uses, Section 32-201(1) General Requirements of the Newmarket Zoning Ordinance, to permit duplex residential use in an open space subdivision in the R2 Zone, in place of single family homes and Section 32-201(2)(d) to allow a 30-foot separation for the proposed duplex structures to remain consistent that are a permitted use as shown under (d)(3) thirty foot structural separation for all single family structures within the development and that the criteria as submitted by the applicant be included in our decision. The property is located at 77 Hersey Lane, Tax Map R4, Lot 2, R-2 Zone.**

**Second: Bob Daigle**

**Vote: Chris Hawkins opposed**

**All others in favor**

**Agenda Item #4 - New/Old Business**

None.

**Agenda Item #5 - Adjourn**

**Action**

**Motion: Bob Daigle made a motion to adjourn at 8:15 p.m.**

**Second: Richard Shelton**

**Vote: All in favor**