**NEWMARKET ZONING BOARD OF ADJUSTMENT MEETING**

**APRIL 1, 2019**

**MINUTES**

Present: Chris Hawkins (Chairman), Bob Daigle (Vice Chairman), Diane Hardy (Zoning Administrator), Wayne Rosa, Steve Minutelli, James Drago, Connor Crowley (Alternate), Jonathan Sack (Alternate)

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

**Agenda Item #2 - Review & Approval of Minutes: 02/11/19**

Chairman Hawkins stated he had a couple of changes. On page 11, line 4, “alliance” should be “compliance” and, on line 22, “relative” should be “relevant”.

**Action**

**Motion: Bob Daigle made a motion to approve the minutes, as amended**

**Second: James Drago**

**Vote: Wayne Rosa abstained due to absence**

**All others in favor**

**Agenda Item #3 - Regular Business**

***Derek Fisher/96 Newmarket LLC - Public hearing for an application for Variances from Sections 32-86 and 32-89 of the Newmarket Zoning Ordinance, to permit two residential units on a .05 acre lot, where six units per acre are allowed. Two units previously existed within this building. The lot is located at 96 Main Street, Tax Map U2, Lot 30, M2 Zone.***

Corey Colwell, T. F. Moran, represented the applicant. He stated the property has 22’ of frontage. It is 2,046 sq. ft. in size. It contains a 2½ story building. On the first floor is the former restaurant space and, on the second and third floor, is the residential space. Mr. Fisher owns the Wing Itz restaurants, located in Dover and Portsmouth. Wing Itz is a seacoast wing and butchery shop, established in 2007, and specializes in chicken wings. Mr. Fisher hopes to bring his third location to this Newmarket building. This is the former location of Jeremy’s Pizza & Deli.

The second and third floor contains residential living space. In the building, there are two living rooms, two kitchens, two bathrooms, and four bedrooms. This formerly existed as two residential dwelling units. A former owner abandoned the use as two dwelling units. It became a nonconforming use. Due to that abandonment, it reverted to a single family dwelling unit. Mr. Fisher wants to revert it back to two residential dwelling units. All of the infrastructure is in place,

There are two points of egress. There are separate meters. There is kitchen and bathroom space for two dwelling units. Changing to two residential units in the M2 Zone requires a variance pursuant to Section 32-86 of the Zoning Ordinance.

Since the lot contains 2,046 sq. ft., it is relatively small. Only one unit would be allowed under this density requirement. The living requirements are in place for two residential units and there is no major construction necessary for the conversion. All of the infrastructure is in place. It is a reasonable change. There are separate access doors and separate meters for each unit. Each unit has its own bathroom and kitchen space. Each would have two bedrooms and contain over 900 sq. ft. There are two existing parking spaces in back. They realize this is enough for one unit under the ordinance. There are many offsite parking spaces within 500’ of the property. They understand the Elm Street lot, also within 500’, has spaces available. If the variance is granted, they will apply for parking permits for two spaces in that lot, which could be used by the second residential unit.

Mr. Colwell stated he has responses to the five criterion that he submitted to the Board. Chairman Hawkins stated if he wanted to elaborate on them or add to them, he could do so now. He asked Mr. Colwell to especially address how the special conditions of the property distinguished it from other properties in the area.

Mr. Colwell stated, to summarize Criteria 1 and 2, the two residential units existed for many years, with restaurant space below. The proposal does not alter the essential character of this location. It still promotes the mixed uses in the downtown. It still preserves the spirit of the ordinance and the downtown is specifically designed for this type of mixed use of residential and restaurant. It is not contrary and observes the spirit of the ordinance.

For Criterion 3, granting the variance would do substantial justice, because the building had existed for quite some time as two separate units and there is very little work to be done to make them two units again. There are a number of existing nonconforming lots in that district and in close proximity.

To Criterion 4, there are no changes proposed to the exterior of the building involving these units, so there is no change to surrounding property values. The building would have the same look and feel.

To Criterion 5, he stated the ordinance says in its Purpose this is to guide the character of growth, development and change, in order to provide for the public health, safety, and general welfare. Returning the building to two units does not alter this purpose. The use is reasonable, because the lot had two residential units, it provides an ideal place for high density, and it provides opportunities to live and work in this area and the use of public transportation. It is in keeping with the surrounding properties. For those reasons, they maintain this is a reasonable use.

He stated, in summary, it had existed this way for many years in the past and there is very little change necessary for that building. They are looking for a variance to allow the building to go back to two separate units.

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

There were no comments.

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

Steve Minutelli asked how big the surrounding lots were. Mr. Colwell stated the lot to the west was a similar size. Chairman Hawkins stated he thought they were all tiny lots. Mr. Colwell showed a tax map, U2, of the area. He stated there were four lots that are almost the exact same size. There are some lots even smaller.

Bob Daigle asked how the dwelling unit was discontinued. Mr. Colwell stated the Building Inspector told them it was abandoned. He did not know for how long. Bob Daigle asked how many water and sewer assessments were on that lot. Derek Fisher, the property owner, stated he just purchased the property and did not yet have the water and sewer information. Bob Daigle stated what he was getting at was, if he was paying water and sewer for two residential units, then maybe he doesn’t need the variance, as it is not abandoned. Diane Hardy stated they are being taxed on one residential unit. Bob Daigle asked if Wing Itz was contingent on getting this residential unit. Derek Fisher stated it was not. He is already renovating the restaurant.

Chairman Hawkins stated this property is fully equipped and ready to go for two residential units. It would be unnecessarily wasteful, under the circumstances, to not recognize that as a condition. Whether it distinguishes it from other properties in the area, he did not know. Some discretion, in this instance, is called for.

Steve Minutelli stated he saw nothing wrong with the second dwelling unit. He felt the hardship criterion answer was light. He supported what was presented and had no problem with the second unit, but wanted to reserve the right to weigh the facts of a future case in a different manner. Chairman Hawkins stated he agreed and he felt some discretion was called for, in this instance, making no promises as to what might happen with a different application, under different circumstances. It is completely set up and ready to go for two units, as it is. Steve Minutelli stated he was willing to support that, for this application.

**Action**

**Motion: Bob Daigle made a motion to grant the variance based on the unique nature of the parcel, that being it has two residential units that are currently ready for occupancy, not requiring any major construction. Making the owner bring the building into compliance would be wasteful and contrary to the intent of the ordinance**

**Second: Wayne Rosa**

**Vote: All in favor**

***Election of Officers***

James Drago nominated Chris Hawkins for Chairman and Bob Daigle for Vice Chairman. Wayne Rosa seconded. All were in favor.

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

Diane Hardy mentioned the spring conference.

**Agenda Item #5 – Adjourn**

**Action**

**Motion: Bob Daigle made a motion to adjourn 7:30 pm.**

**Second: Jonathan Sack**

**Vote: All in favor**

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