

**NEWMARKET ZONING BOARD OF ADJUSTMENT**

**JANUARY 13, 2020**

**MINUTES**

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

Absent: Bob Daigle (Vice Chairman) - excused

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

**Agenda Item #2 - Review & Approval of Minutes: 01/06/20**

Chairman Hawkins appointed Connor Crowley to replace Bob Daigle.

**Action**

**Motion: Steve Minutelli made a motion to approve the minutes as drafted**

**Second: James Drago**

**Vote: Chris Hawkins**

**All others in favor**

**Agenda Item #3 - Regular Business**

**Melvin Prostkoff & Helen Hanan - Public hearing for an application for a Special Exception reference Section 32-5(2) of the Newmarket Zoning Ordinance, to permit the construction of an addition within the 125 foot setback from the Lamprey River, and a Variance reference Section 32-154(d)(2)(b) of the Newmarket Zoning Ordinance, to permit toilet facilities in the existing accessory building, at 17 Moody Point Drive, Tax Map R2, Lot 42, R1 Zone.**

Attorney Justin Richardson represented the applicants. They submitted five letters of support from neighbors and abutters. The proposal is to expand the residence and the existing footprint. He showed the location of the addition and the septic system on a plan. The existing septic was built in 1967. That system is being removed. There is also a sink in the accessory building that was added in 1967. It goes to a dry well, which is a nonconforming waste disposal system.

He stated the Prostkoffs are proposing to add a toilet facility to the accessory building. There is a pump station and a tank proposed. He showed the shoreland setbacks on the plan. The septic system will be 150’ from the shoreline.

He gave an overview of the plan. Given the house being sited the way it is, there is a very steep incline up the driveway. It is a fairly significant slope, when you are driving on it. If this building was moved back further, there would have to be site work to level the ground or raise it for the new building. There would also be work in the protected well radius. That would create a challenging impact for construction. There is an existing deck that is 88’ from the shoreline and an existing house built in 1952, as a camp. In 1968, there was an addition and some additional work was done in 1986. They are maintaining the 100’ setback, where the existing building is. A pervious patio is being added.

He stated NHDES required multiple revisions to the shoreland application and septic plan. It was ultimately was approved.

He stated there are six criteria for a Special Exception for a horizontal expansion. The structure will be no closer to the lot line than the existing structure. They are treating the shoreline as if it were a lot line and there is 88’. It does conform to the R1 zone setbacks. It meets all dimensional requirements. The expansion is not in the 100 year floodplain. It is well out of the floodplain. If this floods, downtown Newmarket would be in an interesting situation. The owner has to determine that no other expansion reasonably fulfills the intended purpose. One of the biggest impacts is the slope that comes down. Maintaining the 100’ setback is a reasonable compromise in light of the topography and should not have any adverse impact. Sanitary sewer disposal and water supply are provided. There is water supply and the new septic will be installed. The expansion shall not render the lot proportionally less adequate. They are meeting all of the other dimensional requirements. The last criterion is this will not adversely affect abutting properties, public health, safety or general welfare. This is a good sized lot. The addition fits right in the center. The above criteria have been met.

He stated the ordinance also provides for a vertical expansion. They did not address this directly in their packet. It was brought to his attention. Portions of structures within a setback may be enclosed or expanded upwards, if granted the Special Exception. An upwards expansion should not have any adverse impact on neighboring property, including, but not limited to, blocking of views and/or sunlight. The building is approximately 100’ from the property line. The plans were sent to abutters and they have received positive feedback. The house is elevated above the road. He pointed out and described the contours on the plan. If the structure was moved closer to the road, it would make the structure more imposing due to the elevation. There is no opportunity to block anyone’s view.

Dr. Melvin Prostkoff indicated the abutters and neighbors locations on the plan, including those who wrote letters of support. There were no letters received that did not support the application.

Attorney Richardson stated this structure does not exceed the maximum height limitations. No part of the structure is located within the 100 year floodplain. The expansion does not render the lot proportionately less adequate.

Regarding the variance, there is a sink in outbuilding that drains into a dry well. DES said they wanted the sink taken out, as the well could pose a water quality issue. They wanted it connected to regulation septic system. That, in turn, impacted the subsurface review. DES asked for the system to be designed as if the outbuilding was an additional bedroom. The ordinance states accessory structures shall not be used for habitation. It is in the covenants, as well. The Prostkoffs incurred significant additional expense in order to provide this. The building will not be used as a bedroom. It makes sense, having incurred the expense, to add a toilet facility. This would allow people using the dock to use this facility, rather than track through the house. All discharges will be into one system. This will allow the owner to use the septic system as it was designed to be used. There were three steps to this: the Wetlands Permit, the Shoreland review, and the construction and operation of the septic system.

Attorney Richardson stated this would not be contrary to the spirit of the ordinance or public interest. It does not threaten public safety, health, and welfare. It does not conflict with the basic zoning objectives. He cited Attorney Peter Loughlin law book which states a mere conflict with the ordinance is not enough for denial. The spirit of the ordinance is reflected in the ordinance, when it talks about water quality protection and that is what they were trying to do here.

For the substantial justice criterion, there is a benefit by allowing all of this to be connected.

The hardship is that he has to incur the additional costs just to keep the sink that he already has.

The values of surrounding properties are not diminished. The only potential impact is if the septic system failed and that is what they are trying to prevent.

For the hardship test, there are special conditions for this property. This is a grandfathered 1967 structure and DES has mandated that it be connected. The benefits are to the public to protect water quality. The hardship is the financial burden to connect to a new system. The use is a reasonable one. Considering this is a shoreline property, there is no other access with bathroom facilities. That is a reasonable use that would fit in well.

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

Chairman Hawkins stated there were five letters of support in the record.

There were no comments.

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

Chairman Hawkins stated the application was very comprehensive. He sees a net benefit and betterment as a whole. This involves putting in an advanced and comprehensive septic system. This is close to the river and this will result in a net benefit for the river in the long run for water quality. He would be happy to see the Board approve the application and adopt the applicant’s submission as the findings of the Board.

**Action**

**Motion: Steve Minutelli made a motion to approve the Special Exception granting it to permit the construction of an addition within 125’ setback from the Lamprey River and adopting the application as the Findings of Fact**

**Second: Wayne Rosa**

**Vote: All in favor**

Chairman Hawkins stated they would take up the variance. James Drago stated it would be in the public interest to grant it. Chairman Hawkins stated this would clean up a potential issue with the dry well, which DES had identified. James Drago stated based on the presentation there would be no diminution of surrounding property values. Chairman Hawkins stated it is consistent with the spirit of the ordinance. This is a unique property. There are some steep grades and some challenging existing structures and underground structures. Jonathan Sack stated DES has targeted this area on Great Bay for some time and are concerned about existing leach fields. This has been an ongoing focus of DES. Chairman Hawkins stated he proposed approving the variance subject to the condition that the structure marked on the plans as existing storage building not be used for habitation and adopting the presentation materials, which are very comprehensive and well done as the Findings of the Board.

**Action**

**Motion: James Drago made a motion to grant the Variance subject to the condition that the structure marked on the plans as existing storage building not be used for habitation and adopting the presentation materials, which are very comprehensive and well done as the Findings of the Board**

**Second: Wayne Rosa**

**Vote: All in favor**

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

None.

**Agenda Item #5 - Adjourn**

**Action**

**Motion: Steve Minutelli made a motion to adjourn at 7:35 p.m.**

**Second: Connor Crowley**

**Vote: All in favor**