**NEWMARKET ZONING BOARD OF ADJUSTMENT**

**JANUARY 11, 2021**

**MINUTES**

Present: Bob Daigle (Chairman), Wayne Rosa (Vice Chairman) James Drago, Steven Minutelli, Al Zink (Alternate)

Absent: Jonathan Sack (Alternate)

1. **Pledge of Allegiance** –

 Bob Daigle opened the January 11, 2021 Meeting of the Zoning Board of Adjustment at 7:04 pm, followed by the Pledge of Allegiance.

**2. Review and Approval of Minutes**

**a.** 11/16/2021

 Changes to typos on page 3 and change end-time of meeting to 8:04 pm.

 **Action**

 **Motion: James Drago made a motion to approve all the minutes as edited above**

 **Second: Steven Minutelli**

**Vote: James Drago, Steven Minutelli, Bob Daigle in favor** *(Wayne Rosa arrived late)***; Al Zink abstained. (Voted following a roll call vote.)**

**3. Regular Business**

 **Item A. Peter Bergeron – Public Hearing for an application for Special Exception reference Section 32-5(2)b, of the Newmarket Zoning Ordinance, to permit the upward expansion of a structure that is 8 feet from the property line, where 25 feet is permitted. The property is located at 63 Packers Falls Road, Tax Map U1, Lot 18, R1 Zone.**

 Bob Daigle said this an application for a Special Exception, and if the Applicant meets all 4 of the criteria, they have to grant the Special Exception because it reads:

***b. Portions of structures within a setback may be enclosed or extended upwards if granted a special exception by the Zoning Board of Adjustment. The Zoning Board of Adjustment shall grant the special exception only if the following conditions are met:***

1. ***If an upward expansion, it shall not have any adverse impact on any neighboring property, including but not limited to blocking of views and/or sunlight.***
2. ***If an upward expansion, it shall not exceed the maximum height limitations specified in this chapter.***
3. ***No part of the structure shall be located within the 100-year floodplain.***
4. ***The expansion shall not render the lot proportionately less adequate.***

 Peter Bergeron of 63 Packers Falls Road said he is seeking a Special Exception to put a second story on the back of an existing structure which is 8 feet from the property line, and to go upwards he must meet the 4 criteria listed above. He stated that: (1) The property is not in a 100-year floodplain, (2) There are no adverse effects to any neighboring property; (3) the property will not be proportionately less adequate, and the existing structure will not be minimalized in terms of height, width, and length; and (4) as far as height limit, he is only building up to 22’9” and the maximum height is 35 feet.

 Bob Daigle said architectural renderings were provided and are part of the file.

 Diane Hardy said all abutters had been notified and no written comments from abutters had been received.

 ***Bob Daigle opened the public hearing.***

 Tom Thomas of 61 Packers Falls Road said he is one of the abutters and has no issues.

 ***Bob Daigle closed the public hearing.***

 Al Zink said he had no doubt on any of the material submitted for approval.

 Steven Minutelli stated that the house is in an R1 zone and is a legal non-conforming residence located 8’ from the lot line where 25’ is required, and this is just an upward expansion of the existing non-conforming structure. The applicant is intending to make the home more suitable for his growing family. He felt the Applicant sufficiently demonstrated no adverse impact on neighbors’ properties, including on views or sunlight, since the applicant is seeking a horizontal expansion of the existing structure and the footprint is not changing.

 Steven Minutelli said the record reflects the Applicant told the Zoning Board he is renovating the home and the expansion may increase the value of his home and have a favorable impact on the value of surrounding properties satisfying the first criteria; for the second criteria he is not going to exceed the maximum height restrictions; for the third criteria he is obviously not in a floodplain; and regarding the fourth criteria the applicant will be improving the value of his lot. He added that this is an application about an upward expansion of an existing structure and the proportionality of the lot is not changing and the final requirement is met.

 Steven Minutelli said the law in cases of Special Exception is quite clear; the New Hampshire Supreme Court case of Shell Oil vs. City of Manchester at 101 NH, p 76 stands for the proposition that where all the criteria for a Special Exception are met, the Zoning Board of Adjustment must grant the Special Exception.

 **Action**

**Motion: Steve Minutelli made a motion to grant the special exception pursuant to Section 32-5, subsection (2)b, of the Newmarket Zoning Ordinance to permit the upward expansion of the existing structure at 63 Packers Falls Road.**

 **Second: James Drago**

 **Vote: James Drago, Steve Minutelli, Wayne Rosa, Bob Daigle all in favor, Al Zink abstaining.**

**4. New/Old Business**

**5. Adjourn**

 **Action**

 **Motion: James Drago made a motion to adjourn at 7:21 pm.**

 **Second: Al Zink**

 **Vote: All in favor, following a roll call vote.**