**DRAFT**

**NEWMARKET ZONING BOARD OF ADJUSTMENT**

**MARCH 8, 2021**

**MINUTES**

Present: Bob Daigle (Chairman), Wayne Rosa (Vice Chairman), Diane Hardy (Zoning Administrator), James Drago, Steven Minutelli, Jonathan Sack (Alternate), Al Zink (Alternate)

**1. Pledge of Allegiance**

**2. Review and Approval of Minutes**

January 11, 2021 Edited Minutes (pushed to end of meeting)

**Action**

**Motion: Wayne Rosa made a motion to approve the minutes of 01/11/21**

**Second: Al Zink**

**Vote: All in favor – Roll call vote**

# Regular Business

***Application of 11 Chapel Street, LLC for property at 11 Chapel Street, Map U2 Lot 3 Zone M-2 Zone for a variance to allow the proposed conversion of 620 square feet of an accessory barn structure for commercial/retail use pursuant to Sec 32-5 (1) and (3) to permit the expansion of a non-conforming use and structure on a lot that does not meet current dimensional and use requirements and a variance to Section 32-46 (6) © to allow parking within the front side yard.***

Attorney Chris Mulligan, Bosen & Associates, represented the applicant. He stated they are proposing a bike shop should this application be approved. The property had been in some distress and the applicant has made many improvements. There are two single family dwellings on the property. There was also a very dilapidated barn. That has been razed. The new structure was moved from the footprint by 20’. They would like to have a retail use on the first floor of the new structure. The property is nonconforming by lot area, density and front and side setbacks. It is a unique property. It has a Chapel Street address. The only access is from Granite Street. It is a corner lot. The main structure fronts Chapel Street. Along Granite Street in front of the 3 bedroom residence there has historically been stacked (parallel) parking, three cars in a row right before the stop sign. They would like to formalize that parking arrangement. This parking arrangement has existed for many years. They would like to square off the driveway.

They would like to convert the first story of the accessory structure into a bike shop. The lot is just over 8,500 sq. ft. in the M2 Zone. The immediate abutter is the Stone School, not a residential use, one door over is the Stone Church. This business is a daytime business primarily.

To the criteria, he stated that the spirit and intent and public interest criteria are usually taken together. This proposal is consistent with the spirit and intent of the ordinance and is not contrary to the public interest. The proposed use is complementary to the existing uses of the property. The M-2 zone is to provide for high density and a mix of uses and this use does that. The next is substantial justice. This requires the Board to balance the hardship to the applicant against gain to the public. The gain to the public in this case outweighs the benefit to the applicant. The exterior improvements will not significantly alter the structure or character of the neighborhood. The site provides sufficient parking to accommodate the proposed use. They do not feel the surrounding properties will be affected and no diminution will occur. In addition, there is parking that is already existing along Granite Street. There are a number of nonresidential uses in the M2 zone and it provides for mixed commercial uses. The exteriors will not be altered except for signage. Planning Board site plan approval will be required. As to the unnecessary hardship, previously this property was in significant need of upgrades.

Mr. Connell has spent substantial money for improvements. It is a corner lot that has a number of nonconformities. It has a Chapel Street address but access is from Granite Street. Commercial uses are contemplated within this zone. A very modest commercial use is being proposed. Parking requirements should be minimal. The use is consistent with other uses in the zone. The immediate abutting uses are compatible. The lot has very steep topography, it slopes downhill in the rear.

Mr. Connell stated he has owned the property since 2017. It was heavily distressed. He wants to make the town better and has made a significant investment in the property.

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

Karen Gorski, 19 Spring Street, commented on parking in the area and was afraid someone would park in front of her garage. Attorney Mulliigan did not think that would occur. It was not their intent to use other parking in the neighborhood. There is parking onsite. The size of this proposal will not accommodate a large influx of customers. Eric Weinrieb, of Altus Engineering the applicant’s engineer, stated the business use complements the two residential uses on the site.

Wayne Rosa asked how many parking spaces are required. Diane Hardy stated there are two residential units and they require two per unit. There is one parking space required for retail per 200 square feet of gross floor area or 3 spaces. The M2 zone offers flexibility for shared parking and can include credit for off- site parking that is available. The Planning Board will review this. Attorney Mulligan stated there are enough spaces on site if the residential spaces are freed up or they may request a waiver from the Planning Board. If the Zoning Board is concerned about setting a precedent, they will withdraw the parking variance request. Bob Daigle stated when people work during the day it opens up the spaces that can be used for retail use during the day. Wayne Rosa agreed. Diane Hardy stated there are items at the Planning Board level that need to be answered regarding the parking spaces.

Wayne Rosa stated he was there on Saturday and noticed a car parked across the driveway so there was no way to turn in. He asked that this not be blocked.

Penny Wood, 29 Raeder Drive, Stratham, made a comment by mistake.

Wayne Rosa has no problem with the concept.

Al Zink also agreed with the application meets the criteria. Steven Minutelli and James Drago agreed.

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

**Action**

**Motion: Bob Daigle made a motion to grant the Variance to Sec 32-5 (1) and (3) to permit the expansion of a non-conforming use and structure on a lot that does not meet current dimensional and use requirements and that we use the findings herein as our Findings of Fact and as a special condition see what the owner can do to minimize the impact of parking on abutting properties.**

**` Second: Al Zink**

**Vote:**  **All in favor Roll call vote**

**(As stated above the request for the second variance regarding parking in front of the building on Granite Street was withdrawn at the request of the Applicant’s Attorney. )**

***Application for an Appeal of an Administrative Decision from William Ouelette/Ouelette Family Trust concerning clarification of a 2005 Zoning Board Decision and Administrative Decision of Diane Hardy, Zoning Administrator dated January 27, 2021 regarding 5,000 square foot vacant lot at 21/23 Ham Street Extension, Map U2, Lot 310 in the R2 zone.***

Attorney Brad Lown represented the applicant. After fifteen years, they are before the Zoning Board to clarify a decision from 2005. Diane Hardy’s letter gives the history. He stated in 2005 this Board made a finding there were two separate lots. The 21/23 Ham Street Ext is a duplex and the adjacent lot is about 5,100 sq. ft. and is empty. The Board found they were two lots of record. That finding means that the empty lot is nonconforming and grandfathered. The Board found there were two separate lots. He stated Diane Hardy’s letter stated in 2005 the applicant’s representative clearly stated what they were looking for, but it wasn’t clearly discussed by the Board. He went over Babcock vs. Rye court decision. Diane Hardy’s letter states it was her opinion that the ZBA’s earlier decision was inconclusive and should be clarified. His client does not intend to build at this time. He may sell both properties. There are a number of nonconforming lots and structures in the area. It has water and sewer and is within walking distance of town. It could be affordable to build a small house on the lot.

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

No public comments.

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

Al Zink stated it was clear in the 2005 notice it was for two buildable lots. He went through the minutes. After reading the minutes and listening to Brad Lown, he thought this was clearly explained. He talked about the two buildable lots issue and Babcock vs. Rye. He did not conclude that it was not fully deliberated. We know notes are notes and are not comprehensive discussions. It is hard to see that there wasn’t full discussion.

Bob Daigle stated they would not go through this unless they had intentions of doing something with the land, conveying the land as a buildable lot. Wayne Rosa stated he felt it was buildable according to the dimensions. It was clear in 2005 it was two lots.

Brad Lown stated there is a recently completed survey in the application packet.

Diane Hardy stated this meeting was to confirm that the intent of the application dated in 2005 was to determine whether this was a buildable lot of record. Under current zoning they were talking about a single family house not a multifamily building. The intent was it would be approved for a single family home. That is what was allowed in that zone at the time and currently.

**Action**

**Motion: Al Zink made a motion that the intent of the decision of December 12, 2005 was to allow conveyance of this separate lot for construction of a single family home**

**Second: Steve Minutelli**

**Vote: All in favor – Roll call vote**

**James Drago – had technical issues with just this application, and therefore abstained from voting.**

***Application of Elliott and Donna Reed at 1 Oak Knoll Drive, Newmarket, NH, Tax Map U1, Lot 1-23 R2 Zone for a Special Exception for an Accessory Dwelling Unit (ADU) from Section 234 of the Newmarket Zoning Ordinance.***

Donna Reed stated she and her husband would move into the new addition and their son and his family would move into the main house.

Elliott Reed stated their submittal was self-explanatory and referred to the submittal.

Bob Daigle reviewed the eight conditions.

Donna Reed stated they have those conditions covered, and feels they comply. They also have a new roof and siding so they can easily match the exterior.

Bob Daigle stated the plans are very thorough.

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

Lee Boardman, 5 Woods Road, an abutter, was in favor.

Paula Smart at 27 Riverbend Road, asked about the second driveway. The applicant indicated that they are not building a second driveway, just expanding the existing one to accommodate two more cars.

**Action**

**Motion: Steven Minutelli made a motion to grant the Special Exception for an accessory dwelling unit per Chapter 32, Section 234 of the Newmarket Zoning Ordinance**

**Second: Wayne Rosa**

**Vote: All in favor – Roll call vote**

# New/Old Business

None.

# Adjourn

**Action**

**Motion: James Drago made a motion to adjourn at 8:15 p.m.**

**Second: Al Zink**

**Vote: All in favor – Roll call vote**