**NEWMARKET ZONING BOARD OF ADJUSTMENT MEETING**

**APRIL 26, 2021**

**MINUTES**

Present: Bob Daigle (Chair), Wayne Rosa (Vice Chair), Diane Hardy (Zoning Administrator), Al Zink

Absent: James Drago, Steven Minutelli – excused

# 1. Pledge of Allegiance

# 2. Review and Approval of Minutes Tabled to next meeting.

# 3. Regular Business

**a***.* ***Robert Lang/Brian & Diana Leary - There will be a public hearing for an application for a Special Exception, reference Section 32-234, Accessory Apartments, of the Newmarket Zoning Ordinance, requested by Robert Lang/Brian & Diana Leary, to permit a 990 sq. ft. accessory apartment addition to the existing single family home. The property is located at 14 Durell Drive, Tax Map R5, Lot 159, R2 Zone.***

Robert Lang, 20 Portsmouth Ave, Stratham NH, represented the applicants. The ADU is under 1,000 sq. ft. Emmanuel Engineering did a survey for the foundation certification and verified the 30’ setback. They would like to build a 990 sq. ft. addition to the back of the house for their parents to live in. Their parents currently live in Texas and they would like to bring them here in order to take care of them. They looked at several ways to build the addition, including lengthwise off the back of the house, but they did not want to block off the neighbors. They have done everything with aesthetics in mind and what was best for the neighborhood.

Bob Daigle went over the eight criteria. He stated the applicants have met all of them.

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

Keri Bosworth, 1 Edwin Lane, stated this was not just an accessory dwelling, but there is also a garage. It is going to be over 900 sq. ft. for the ADU and another 730 sq. ft. for the garage. 1,500 sq. ft. in their backyard does not leave a lot of open space for privacy.

Robert Lang stated the garage is on the front near Durell Drive, next to the existing garage. Bob Daigle stated that is not what is on the plan. There was some confusion over which plan was current. Mr. Lang clarified which was the correct plan and explained what was shown. He stated he gave the Building Official some plans, but did not submit them to the Zoning Board for the file and record.

Joseph Napoletano, 3 Edwin Lane, stated these are small lots in the subdivision. The garage and addition footprint are equivalent to his entire house. He would prefer they go lengthwise. He did not think it aesthetically fits. Mr. Lang stated they felt the placement was the best and they are trying to keep the consistency of the house. Mr. Napoletano stated the abutters at 1 and 3 Langs stated they would prefer the addition be placed the other way. Bob Daigle stated they could not have a common door that way.

Bob Daigle stated there were only three members present and there are usually five, which would make a full board. The applicant has the option of waiting for a full board.

Diana Leary stated they have lived in the community for 28 years. The neighborhood and neighbors are very important to them. She has talked with the neighbors and have been willing to put up more landscaping for privacy and tried to work with them as best she can. They do care about them.

The applicants chose to proceed with three board members.

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

Wayne Rosa stated he looked at the property from his truck and saw where they had staked the corners. He asked where the property line was. Mr. Lang stated it was at the stone wall, 56 feet from the house. It is 36 feet from the addition. He would like this contingent of a better plan of the garage area.

**Action**

**Motion: Al Zink made a motion to approve the Special Exception, with the condition that a better site plan is provided that shows the new garage**

**Second: Wayne Rosa**

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

***CC 86 Main LLC - There will be a public hearing for an application for a Special Exception, reference Section 32-46(b)(2)(a) and a Variance reference Section 32-86 Residential Density and Table 32-89 Dimensional Table, of the Newmarket Zoning Ordinance, requested by CC 86 Main LLC, to permit the conversion of the second and third (3980 sq. ft.) into six residential units. The building would continue to contain mixed use. A variance from residential density requirements calling for six units per acre is necessary, as this application for six units is on a lot which is approximately .05 acres according to Town records. The property is located at 86 Main Street, Tax Map U2, Lot 51, M2 Zone.***

Bob Daigle gave the applicant the option of waiting until a full board was present. The applicant chose to proceed.

Attorney Hank Stebbins represented the applicant. He chose to have the hearing, but wanted to reserve the right to postpone the decision. Bob Daigle stated he was not comfortable with that, as members attending the second meeting who are not present now will not hear this testimony or ask questions the way they will tonight. The other members agreed. Attorney Stebbins agreed and stated they would proceed.

Attorney Stebbins stated they recently submitted a building permit application to renovate the building and they were referred to this Board. The second and third floor were meeting rooms for the Masons. They would like to convert this to six residential units. The zoning permits six per acre. In addition, they submitted a fiscal analysis and market study. The building was built in 1873. It was used for meetings of local Masons. Now it is mostly empty. The first floor is occupied by Crackskull’s. The building’s upkeep has been neglected. The ordinance says multifamily uses may be permitted in M2 if the ZBA accepts a fiscal impact and market analysis. They had submitted both.

He went over the criteria for the variance.

The building is in the M2 zone. Most buildings are on postage stamp lots with multiple units. A variance was recently granted to a neighboring building to expand the number of residential units. This is a historic building in the middle of downtown that is under-cared for. They will not change the exterior. Renovations will be interior with the addition of a sprinkler system.

This will not be contrary to the public interest. The Master Plan speaks proudly of the downtown revitalization. This proposal is a continuation of that.

To the second criteria he stated the Master Plan states the ordinance refers to enhancing downtown by providing an appropriate mix of uses, improving its appearance and maintaining its New England character. This project seeks to address many of the Master Plan goals. It also complies with the purpose of the M2 District and the Simplex court decision stating the zoning ordinance must be consistent with the character of the neighborhood. This project would be consistent with the many other properties in downtown.

To the third criteria he stated the ordinance and Master Plan support their requests. Granting this would comply with the Simplex ruling. The maximum number of units is not reflective of the area. The downtown is filled with buildings that do not comply. Not granting this would be a violation of the NH Constitution. This gives all persons the right to acquire, possess and protect property. You cannot deprive someone of the reasonable use of the property.

The value of surrounding properties will not be diminished because this is consistent with many buildings downtown. The architecture outside will not change.

Regarding hardship the building is deteriorating and takes up the whole lot. The parcel is .05 acres. Preservation of historic buildings is a major goal of the Master Plan. This project is an important step in meeting these goals.

He stated the applicant has concerns about downtown parking and is on the Parking Committee. He owns a number of properties in town and has parking spaces that these tenants can use. He read a section in the Ordinance referencing parking. The Masons held meetings there. The total spaces would come to sixteen spaces for them, which is more than required for these units. The second and third floor meeting spaces would require over 130 spaces.

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

No one spoke.

Wayne Rosa stated the building should be saved. He expressed concern about parking. Ben Stebbins stated he owns 100 Main Street that has 26 spaces and 4 are being used. He has more at 4 Chapel Street with 5 spaces. 29 Central Street has parking with 4 spaces. He can also park cars on Railroad Street.

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

Bob Daigle asked why three units on each floor. Ben Stebbins stated it would have the least impact on downtown and fit the structure.

Attorney Stebbins stated this would be more affordable and help meet demand.

Diane Hardy asked what the rental fee would be. Attorney Stebbins stated it would be market rent. Ben Stebbins stated $900-$1,200. Diane Hardy wanted to make sure the demand was being met. She stated this requires Planning Board site plan approval and they will address parking.

Al Zink stated this would be a boon to town.

Diane Hardy asked if they had looked at RSA 79E which provide tax relief for projects involving adaptive re-use and historic preservation. Ben Stebbins stated he had.

**Action**

**Motion: Al Zink made a motion to grant the Special Exception 32-46 (b)(2)(a)**

**Second: Wayne Rosa**

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

Bob Daigle stated the submittals would be the Findings of Fact.

**Action**

**Motion: Al Zink made a motion to approve the Variance reference Section 32-86 Residential Density and Table 32-9 Dimensional Table of the Newmarket Zoning Ordinance requested by CC86 Main LLC to permit the conversion of the second and third (3980 sq. ft.) into six residential units. The building would continue to contain mixed use and six units per acre is necessary, as this application for six units is on a lot which is approximately .05 acres according to Town records. The property is located at 86 Main Street, Tax Map U2, Lot 51, M2 Zone.**

**Second: Wayne Rosa**

**Vote: All in favor - roll call vote**

Bob Daigle stated the submittals would be the Findings of Fact.

**4. New/Old Business**

None.

**5. Adjourn**

**Action**

**Motion: Al Zink made a motion to adjourn at 8:12 p.m.**

**Second: Wayne Rosa**

**Vote: All in favor - roll call vote**