 **NEWMARKET Zoning BOARD OF ADJUSTMENT**Monday, JUNE 6, 2022
TOWN COUNCIL CHAMBERS
7:00 PM

**Present:** Bob Daigle (Chair), Wayne Rosa (Vice Chair), Bart McDonough (Director of Planning & Community Development), James Drago, and Al Zink.
**Absent:** John Greene (Alternate), Steve Minutelli, and Henry Smith (Alternate)

The Chair called the meeting to order at 7:02 PM **[time on DCAT 4:22]**
 **#1 Pledge of Allegiance

#2 Review and Approval of Minutes [time on DCAT 4:56]**a. May 16, 2022

**Motion:** **Al Zink** made a motion approve the draft minutes of May 16, 2022.
**Second: James Drago
Discussion:** None **Vote:** **Approved Unanimously 4-0-0**The voting members this evening include: **Bob** **Daigle**, **Wayne** **Rosa**, **James** **Drago**,
and **Al** **Zink**.

**#3 Regular Business**
Read by the Chair: **[time on DCAT 5:11]

a. Reconsideration of Decision: The Zoning Board of Adjustment on its own accord shall reconsider its decision made on May 16, 2022 on an Appeal From Administration Decision Application from petitioner CC 86 Main LLC who sought relief from the ZBA to overturn a decision made by the Building Inspector concerning the imposition of impact fees assessed for six new apartments on real property with an address of 86 Main Street (Tax Map U2, Lot 52) within the M2 zoning district.**The Chair mentioned that this was to be a discussion amongst the ZBA members only.  **Bart** **McDonough** met with the Chair after the meeting on May 16, 2022 and he recommended that the motion on the above matter be reconsidered as no decision was made on the CEO which was the key clause in the application for Appeal of Administrative Decision.

**[time on DCAT 6:25]
Motion #1:** **James** **Drago** made a motion that the ZBA reconsider its decision made on May 16, 2022 on an Appeal From Administration Decision Application from petitioner CC 86 Main LLC who sought relief from the ZBA to overturn a decision made by the Building Inspector concerning the imposition of impact fees assessed for six new apartments on real property with an address of 86 Main Street (Tax Map U2, Lot 52) within the M2 zoning district.
**Second:** **Al Zink**
**Discussion:** None **Vote: Approved Unanimously by Roll Call 4-0-0

[time on DCAT 6:45]**The Chair invited discussion among the members at 7:06 PM.

**[time on DCAT 16:00]**
As a courtesy, the Chair allowed Attorney Stebbins to come forward to speak.Mr. Henry B. Stebbins Esq., from Stebbins, Lazos, and Van Der Beken P.A., Attorneys at Law in Manchester, was present this evening in the audience representing Mr. H. Benjamin Stebbins, the principal owner of the property at 86 Main Street and he sought recognition from the Chair.
  **[time on DCAT 23:09]**There was further discussion among members. **[time on DCAT 27:00]**
**Motion #2: Al Zink** made a motion to confirm that the Building Inspector erred in the timing of the assessment impact fee.
**Second: Bob Daigle
Discussion:** The members asked about the various paths forward for the applicant. **Bart** discussed the return of fees, an appeal to Superior Court, returning to the Planning Board or the possibility of a settlement.
**Vote**: After further discussion by members, **no vote was taken.**
**[time on DCAT 30:06]**
**Motion #3**: **Al** **Zink** withdrew this motion.
**Second:** **Bob** **Daigle** withdrew his second.
**Discussion**: None
**Vote**: **Approved Unanimously** **4-0-0

[time on DCAT 32:49]**
The Chair explained that the ZBA has a quorum this evening with four of five members present. The applicant must receive three votes for an approval or they have the option to continue to another meeting if they would prefer to have five members present. The applicant agreed to go forward.
**Al** **Zink** discussed that the billing invoice itemizes both impact fees and hook-up fees as two separate billings.
 **[time on DCAT 40:37]
Motion #4: Bob Daigle** made a motion to affirm the CEO’s decision to impose impact fees in a letter dated March 31, 2022. **Second: Al Zink
Discussion:** None **Vote: Motion Failed-Roll Call 2-2-0
 Yea- Bob Daigle** and **Al Zink
 Nay- Wayne Rosa** and **James Drago

[time on DCAT 49:38]
Motion #5: Bob Daigle** moved to reject the CEO’s decision to assess impact fees in the amount of $13,728.00 plus applicable interest per the invoice dated March 31, 2021. **Second: Al Zink
Discussion:** None **Vote: Approved Unanimously-Roll Call 4-0-0**
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Read by the Chair: **[time on DCAT 51:56]**
**b**. **Pursuant to RSA 674:33 and RSA 676:7, a continuation of a public hearing for a variance request from Bradley Curth, petitioning the Zoning Board of Adjustment for relief from Section 32-87(2) Setbacks of the Municipal Town Code of the Town of Newmarket to build a deck staircase 4.5-ft. from the property line where 10-ft. is allowed on real property with an address of 9 Creighton Street (Tax Map U2, Lot 3) within the R4 zoning district.**The Chair explained that the ZBA has a quorum this evening with four of five members present. The applicant must get three votes for an approval and they have the option to continue to another meeting if they would rather have five members present. Mr. Curth wished to proceed.

Mr. Curth described his project for a spiral staircase off of his back deck and discussed all of the work he has done on the 1846 house. Properties in the Creighton Street neighborhood are very close to one another.

**[time on DCAT 56:42]**The Chair opened public comment at 7:54 PM. No one came forward. The Chair closed public comment at 7:55 PM.

Since members had a copy of the criteria in their packets, the Chair allowed that Mr. Curth did not have to go through the application. Mr. Curth plans to use a metal spiral stair case kit which meets code. Regular stairs would take up much too much space.
 **[time on DCAT 59:20]
Motion**: **Wayne Rosa** moved to grant the variance request from Bradley Curth, petitioning the Zoning Board of Adjustment for relief from Section 32-87(2) *Setbacks* of the Municipal Town Code of the Town of Newmarket to build a deck staircase 4.5 ft. from the property linewhere 10 ft. is allowed on real property with an address of 9 Creighton Street (Tax Map U2, Lot 3) within the R4 zoning district, as the petition satisfies the 5 part test of the variance statute, pursuant to RSA 674:33.
**Second: James Drago
Discussion:** None
**Vote: Approved Unanimously 4-0-0
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Read by the Chair: **[time on DCAT 1:00:55]

c**. **Pursuant to RSA 674:33 and RSA 676:7, there will be a public hearing for a variance request and special exception application from Paul Marino petitioning the Zoning Board of Adjustment for relief from Sec. 32-89 Dimensional Table and 32-155(d)(4) Wetland Protection Overlay District and approval under 32-5(2) Nonconforming Structure of the Municipal Code of the Town of Newmarket to permit the horizontal expansion of a nonconforming structure by constructing a 12’ x 16’ carport attached to a single-family dwelling unit that encroaches into the side setback within 2.8-ft. from the property line, where 15-ft is required, and within 20.8-ft. of a wetland consisting of poorly drained soils, where 25-ft. is required, on real property located at 28 Dame Road (Tax Map U2 Lot 298) within R2 zoning district.**

Mr. Marino came forward to seek a Variance and a Special Exception for the construction of a carport attached to a single-family dwelling at 28 Dame Road. The lot is only .05 acres, so his options are really limited to keep a car out of the elements. He went through the criteria for his requests. The HOA sent him an email saying that they did not have any issues and they said that they would send a letter. The ZBA has not received that letter as yet. Mr. Marino agreed that he would follow-up on the letter. He brought with him letters from two abutters: 1) Sean and Miriam Morse, 19 Dame Road and 2) Mary B. Connelly, 24 Dame Road. **Bart** **McDonough** read these letters into the record **[time on DCAT 1:06:25].

[time on DCAT 1:08:42]
Variance Request:
Motion #1: James Drago** moved to grant a variance request from Paul Marino petitioning the Zoning Board of Adjustment for relief from Sec. 32-89 *Dimensional Table* and 32-155(d)(4) of the Municipal Code of the Town of Newmarket, New Hampshire for the expansion of a nonconforming structure by constructing a 12’ by 16’ carport attached to a single-family dwelling unit that encroaches into the side setback within 2.8 ft from the property line, where 15 ft is required, and within 20.8 ft. of a wetland consisting of poorly drained soils, where 25 ft. is required, on real property located at 28 Dame Road (Tax Map U2 Lot 298) within the R2 zoning district, as the petition satisfies the 5 part test of the variance statute, pursuant to RSA 674:33, and the ZBA will use the evidence as the finding of fact.  **Second: Al Zink
Discussion:** None
**Vote**: **Approved-Roll Call 4-0-0**
**[time on DCAT 1:10:08]
Special Exception:
Motion #2**: **James Drago** moved to approve a special exception application from Paul Marino to permit the expansion of a nonconforming structure by constructing a 12’ x 16’ carport attached to a single-family dwelling unit that encroaches into the side setback within 2.8 ft from the property line, where 15 ft is required, and within 20.8 ft of a wetland consisting of poorly drained soils, where 25 ft is required, on real property located at 28 Dame Road (Tax Map U2 Lot 298) within the R2 zoning district, as the application, together with the granted variance relief that accompanied this application, satisfies the enumerated standards, pursuant to Sec. 32-5(2)(a) of the Municipal Code of the Town of Newmarket, New Hampshire, also using the
evidence provided by the applicant as finding of fact.
**Second: Al Zink
Discussion:** None
**Vote**: **Approved-Roll Call 4-0-0
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#4 New/Old Business [time on DCAT 1:11:45]
Bart McDonough** reported that Mr. Ben Stebbins will be coming before the ZBA to request two variances required for the property at 3 Railroad Street. Mr. Stebbins has submitted an application for these requests. Members discussed a date for the next meeting and decided on June 27. **#5 Adjourn [time on DCAT 1:16:11]

Motion: James Drago** made a motion to adjourn. **Second: Wayne Rosa
Discussion:** None
**Vote: Approved 4-0-0** The meeting was adjourned 8:15 PM.

Respectfully submitted,

Sue Frick, Recording Secretary

**DCAT:
https://videoplayer.telvue.com/player/XSekkdEeRsk0JHQVHAvKJVka7\_5VjxKP/media/724664?autostart=true&showtabssearch=true**