

ZBA Minutes 12/05/11

NEWMARKET ZONING BOARD OF ADJUSTMENT MEETING DECEMBER 5, 2011 MINUTES

Present: Chris Hawkins (Chairman), Wayne Rosa (Vice Chairman), Bill Barr, Bob Daigle, Ea Ksander (Alternate)

Absent: Gerry O'Connell (excused)

Called to order: 7:00 p.m.

Adjourned: 8:25 p.m.

Agenda Item #1 – Pledge of Allegiance

Agenda Item #2 – Review & approval of minutes: 11/07/11

Action

Motion: Bob Daigle made a motion to accept the minutes as revised

Second: Bill Barr

Vote: All in favor

Agenda Item #3 – Regular Business

Second Reading of amendments to Rules of Procedure reflecting the recent legislative change regarding "Alternate" members.

Adoption of amendments to Rules of Procedure.

Chairman Hawkins stated the proposal is to delete the current language under our Alternates section and replace it. He read the amendment (attached to these minutes).

The amendment will allow Alternates to sit with the Board and participate in discussions, even if they are not appointed to replace an absent member and voting.

Action

Motion: Bob Daigle made a motion to approve the amendment as read

Second: Bill Barr

Wayne Rosa asked about #4 under "Participation". He asked if this meant, if the Alternate is appointed to fill in for a full Board member in an initial public hearing, they would follow through with that application for any subsequent meetings. Chairman Hawkins stated that was correct. The full Board member the Alternate was replacing would not vote on that application.

Vote: All in favor

Acadia Engineers & Constructors – Public hearing for a Variance reference Section 3.03(B), of the Newmarket Zoning Ordinance. The applicant requests a Variance to permit seven residential units in a mixed-use building, where 2.7 is allowed on a lot of 0.451 acres per density calculations in the M2 Zone at six units per acre. The lot is located at 13 Water Street, Tax Map U3, Lot 4, M2 Zone.

Acadia Engineers & Constructors – Public hearing for a Special Exception reference Section 2.02(B)(2), of the Newmarket Zoning Ordinance. The applicant requests a Special Exception to permit multi-family residential use on this lot in the M2 Zone. The lot is located at 13 Water Street, Tax Map U3, Lot 4, M2 Zone.

Chairman Hawkins stated Gerry O'Connell is not present and is recused due to a conflict of interest. He appointed Ea Ksander to take his place.

Tim Nichols, Acadia Engineers & Constructors, presented the application. He read the standards for the Special Exception.

He addressed the general fiscal impacts. He stated there are no general impacts that will increase the fiscal liability of the town. The utility services to the site have been modernized and there are no necessary improvements to sanitary, stormwater or electrical service. The activities associated with construction will not interfere with local commerce. Onsite parking will be provided for all residents. The cost liability for public safety services will decrease, with the removal of an abandoned and unsafe building. The new building will benefit the town, with increased tax revenues. It will revitalize a property that has been abandoned and the residential units will provide new consumers for the downtown businesses. This benefits the Newmarket economy and community.

He addressed the school fiscal impacts. The target buyers for the multi-family condominium units are young professionals, ages 25-35, and older adults, ages 50-70. Young professionals commonly purchase condominium units and then move into single family homes as they have school age children. Older adults commonly purchase condominium units after their children have left home and they approach retirement. It is well-documented that the density of children in multi-family housing is substantially less than children in single family housing. He had provided the Board with some documentation prior to the meeting.

Chairman Hawkins stated the data he provided was state-wide. There was a reference to Newmarket specific data, but he didn't see the data. He asked if the number of Newmarket children coming from multi-family housing was consistent with what is shown statewide. Tim Nichols answered it was. Tim Nichols stated there was a density of .17 children per unit as of 2009 in multi-family housing of five or more units.

If you correlate that data to the proposed development, they are proposing four two-bedroom units and three three-bedroom units. Based on the density requirements it yields seven units and under two school-aged children for the whole development.

He summarized stating adding multi-family residential units would not result in increased financial liability to the Town.

The inherent benefits are substantial with increased tax revenue, increased commerce and a more vibrant community.

He addressed the market analysis. This was completed to ensure the housing need exists for multi-family units and to establish a reasonable expectation that the property will be occupied and maintained. He had a list of multi-family units and had narrowed that to the downtown M1 and M2 districts. Chairman Hawkins asked if he was looking at condominiums only or all multi-family. Tim Nichols stated this was all multi-family that is for sale. They looked at individual units, not complexes. He developed a matrix to determine if there was a need. Based on the units on the market, there are no other units that have all of the characteristics of the units they are proposing, therefore, there is a need for this type of unit. They are looking at a price point of \$350,000 and \$400,000 per unit.

He addressed market sustainability. He presented a chart that verifies there are no listed multi-family vacancies in the town of Newmarket as of October 2011.

Chairman Hawkins opened the public hearing.

Diane Hardy stated the variance needs to be granted before the Special Exception can be granted. She said they should be addressed simultaneously.

Tim Nichols stated the current zoning determines the number of allowed units based on density. They are allowed three units under current zoning. There is a special density requirement in a mixed-use zone that reduces the number of units by one. So, they are reduced to two allowed units. They are proposing seven units. They looked at the density of the building footprint, as it relates to the property. They looked at four other buildings in the area. The densities range all the way up to 232 units per acre. Based on the urban setting, the downtown area, and consistency with mixed-use development, which incorporates a significant part of residential as part of the mixed-use development. Seven units is consistent in the existing area.

Just to the north of the property is the M1 district, abutting Rivermoor Landing. If the zoning district line for the M1 district had moved over one lot to theirs, they would be allowed nine units. Therefore, they believe what is being proposed is consistent with the area.

He stated there is precedence for the existing landowner to construct a seven unit all residential building on this lot with roughly the same footprint, approved by the Zoning Board around 2005 or 2006. Diane Hardy stated the seven residential unit variance previously approved was for new construction. There was also a variance granted for mixed-use, five units and a commercial unit. That was for an adaptive rehabilitation of the existing building.

Chairman Hawkins opened the public hearing for the Variance & Special Exception.

Rob Phillips, representing the Rivermoor Landing Condominium Association, stated there was a meeting on September 10, 2011. He asked for clarification if that first variance was not sufficient and the applicant had to come back. Diane Hardy stated that was correct. The applicant knew they would be coming back with further applications. Rob Phillips asked if the items discussed at the September meeting had to be discussed again. Chairman Hawkins explained these were separate, additional applications that were necessary for the applicant to achieve his goals. The last application was a setback variance for the building to be closer to the church. This variance tonight is a use and area variance. They are not changing the setbacks of the building from what was approved in September.

Rob Phillips stated the Association thought the more residential use, the better, in a building the size of the one being proposed. They felt residential use had the least of all impacts.

Leo "Skip" Manseau represented the Newmarket Community Church. He is a voting member, but is not on any of the Boards of the church. The people involved in the last application were unable to attend this meeting and they asked him to be here. He knew there was relief given to the setback, which is the back boundary of the church property. Tim Nichols showed him on the plan where the setback was. Chairman Hawkins stated the Board had concerns regarding fire safety. The applicant had provided a letter from Chief Malasky stating he was satisfied with the plan presented. They did not need a height variance. They went over some other aspects of the September application with Mr. Manseau to bring him up to speed.

Mr. Manseau asked what the use of the building would be. Chairman Hawkins stated it was mixed-use. The design intent is the bottom floor is a commercial use, Mr. Nichols' business will occupy the second floor and the third and fourth floors will be residential. Mr. Nichols stated there could be more than one commercial use on the second floor. The residential units are two and three bedrooms.

Mr. Manseau asked, if the condos do not sell in a reasonable amount of time, would they rent them. Mr. Nichols stated that was a possibility. Mr. Manseau asked if Mr. Nichols thought, based upon his presentation, that those seventeen bedrooms would be occupied by about 1.7 or 2 children. Mr. Nichols stated yes. Mr. Manseau stated, if their market was young professionals, that may be. The three bedroom units, if they are renting them, might attract people with children.

Mr. Manseau stated one of the issues the people at the church had was the side of the church where this building will be located is the sunny side of the church. The back of the church holds educational classrooms. The biggest concern is fire and the proximity of the building. Mr. Nichols stated this building would be equipped with a sprinkler (fire suppression) system according to code. Chairman Hawkins stated the Board was very concerned about fire and spent some time on this issue. They were extremely conscious of this issue.

There was discussion of the structural design of the building.

Mark McKenzie, 6 Washington Street, stated he was glad something is going to happen with that property. He stated it was too bad it could not be an adaptive use. That is certainly a building that makes our waterfront picturesque, but he understood it was not possible to keep it. His association with variances involves the variance given to a building on Spring Street, which he can see from his residence. The building changed the profile of the street drastically in a number of ways. There was another variance on Exeter Street, which was denied. He was concerned about proportions. He stated this is one of the most picturesque areas of our town and asked how fitting a four story structure would be in that space. He asked about the brick veneer. Mr. Nichols explained the building will be high performance. The veneer is real brick, it is thin. Mr. McKenzie stated the height has an impact. His other concern was balconies. Did the setback encompass the balconies? Chairman Hawkins stated the variance did not apply to the front of the building. Mr. McKenzie stated the brick went with Rivermoor Landing. He was concerned about the balconies. This is a crucial place in terms of Newmarket's identity and attraction for people. The fact the proposed building is four stories high is a concern to him. He also expressed concern about the parking impact. He expressed support for the commercial aspect.

Mr. Manseau stated there was a fair amount of concern with the proximity of the foundation to the church. The church is a pretty old building. There is a drain at the bottom of the exterior stairway. He didn't know where it went, but it exits somewhere, because they don't get flooded. They used to get flooded, but they fixed the north side of the building and it alleviated the problem. Rivermoor had allowed them to tie in to their storm drain and they have been dry ever since. The church does have a finished basement. There is concern about the closeness of the building and the construction issues that may happen. Chairman Hawkins stated this issue was raised at the last variance hearing. Mr. Nichols will be getting a structural engineer to evaluate this. He is aware of the concern.

Rob Phillips stated the applicant would still have to go before the Planning Board. He stated Tim Nichols had made a presentation to the church and he suggested that perhaps he could recap it.

Diane Hardy stated the Planning Board was having a design review with Mr. Nichols on the project on December 13 at 7:00 p.m., the public is welcome to attend. In the M2 District there is a requirement in site plan applications regarding consideration of the façade of the building. Some of the concerns raised would be part of that review process.

Chairman Hawkins stated the Zoning Board's consideration is very narrow. Parking and balconies are a Planning Board matter. They have a broader scope of things they can consider.

There were no further public comments.

Chairman Hawkins closed the public hearing.

Wayne Rosa stated Rivermoor was in the M1 zone and this property is in M2. It would not be out of character to allow more units. Chairman Hawkins stated there is no obvious distinction, but these are two different zones and must be viewed as such. Bob Daigle stated the proposed use is consistent with the area.

Wayne Rosa asked Tim Nichols how many units might be on the first floor. Tim Nichols stated three units at this point in time. Wayne Rosa asked how many units were on the second floor. Tim Nichols stated his offices and three others. On the third and fourth floors there will be seven residential units with an average square footage of 150 square feet.

Action

Motion: Bill Barr made a motion to grant the variance to Acadia Engineers and Constructors reference Section 3.03(B) of the Newmarket Zoning Ordinance reference residential density to allow a variance to permit seven residential units in a mixed-use building where 2.7 units is allowed on a lot of .451 acres per density calculations in the M2 zone at six units per acre, lot is located at 13 Water Street, Tax Map U3, Lot 4, M2 zone, based on the evidence provided in the packet and, in addition, testimony provided by the gentleman from Rivermoor.

Second: Wayne Rosa

Diane Hardy stated this is a mixed-use development and under the Section of the ordinance that permits mixed use developments, the density is actually one unit less than what is normally required. So, in this case it would be five units permitted per acre, not six units per acre.

Action

Motion: Bill Barr made a motion to modify his motion as noted by Diane Hardy

Second: Wayne Rosa

Chairman Hawkins stated a strong showing has been made by the evidence presented that the variance criteria has been satisfied. This is unique property in a unique and important area of town, in terms of economic value and aesthetic value. He found it particularly compelling that this property is constrained by the presence of the easement, which constrains the ability to move the building in either direction, combined with the setback requirements. There is also a sewer forced main going through it, as well, making this property unique.

Vote: All in favor

Chairman Hawkins clarified that the public hearing was closed for both the variance and special exception applications.

Action

Motion: Bill Barr made a motion for Acadia Engineers and Constructors to grant a Special Exception reference Section 2.02(B)(2) of the Newmarket Zoning Ordinance. The applicant requests a Special Exception to permit multi-family residential use on this lot in the M2 zone, the lot is located at 13 Water Street, Tax Map U3, Lot 4, M2, Zone, based on information and evidence provided in the packet provided by the applicant.

Second: Wayne Rosa

Chairman Hawkins stated he would have been happier if the data presented was Newmarket-specific. Bob Daigle stated he got a little lost in some of the financial data, as it was drawn from general NH and national data. Ea Ksander stated short of surveying other condominium developments in the area, you would not get more specific data provided on the town level. Chairman Hawkins stated he was thinking more about the school. That data is available. This is still consistent, so he is not that concerned about it.

Vote: All in favor

Agenda Item #4 – New/Old Business

Diane Hardy had new business. She stated she received an inquiry about a future Zoning Board application on 32 Huckins Drive to be able to encroach upon a wetlands buffer in order to build a stone retaining wall. She gave an overview of the issue. Wayne Rosa suggested the Board drive by and look at the property. It is flagged at this time and it may be snow covered before the meeting about it.

Diane Hardy let the Board know Susan Labrie is taking Dan Vincent's place as Building Official.

Agenda Item #5 – Adjourn

Action

Motion: Bill Barr made a motion to adjourn at 8:25 p.m.

Second: Bob Daigle

Vote: All in favor