

ZBA Minutes 11/07/11

NEWMARKET ZONING BOARD OF ADJUSTMENT MEETING NOVEMBER 7, 2011 MINUTES

Present: Chris Hawkins (Chairman), Wayne Rosa (Vice Chairman), Diane Hardy (Zoning Administrator), Gerry O'Connell, Bob Daigle, Bill Barr, Ea Ksander (Alternate)

Called to order: 7:04 p.m.

Adjourned: 7:39 p.m.

Agenda Item #1 – Pledge of Allegiance

Agenda Item #2 – Review & approval of minutes: 09/22/11

Action

Motion: Bob Daigle made a motion to accept the minutes of 09/22/11

Second: Wayne Rosa

Motion: All in favor

Gerry O'Connell abstained as he was not present at that meeting

Agenda Item #3 – Regular Business

Rules of Procedure – First reading of amendments to Zoning Board Rules of Procedure reflecting the recent legislative change regarding "Alternate" members.

Chairman Hawkins stated they would take up this agenda item after the Special Exception.

Marjorie Bickford – Public hearing for a Special Exception, reference Section 1.05(B)(1), of the Newmarket Zoning Ordinance to permit the replacement of an existing porch with a single car garage, a horizontal expansion of a non-conforming structure within the 40 foot front setback. The lot is located at 1 Lafayette Street, Tax Map U1, Lot 32, Zone R1.

Leo Filion, 3 Lafayette Avenue, represented the applicant. He stated Marjorie Bickford knew he had served many years on the Zoning Board and Planning Board and asked him to present her application. He stated she is recently widowed and wished to build a garage.

He gave a brief history of the property. His father bought this property in the 1940's and, in the 1950s, he subdivided them into four quarter acre lots and two 100'x200' lots. Mr. Filion stated he and his brother built houses there in the 1950s. The other three houses were built in the 1960s, before zoning. The initial zoning was quarter acre zoning if you had water and sewer, half acre if you had only one, and one acre if you had neither. This subdivision had both, so it conformed to the quarter acre lot zoning. Since then, zoning has changed and this area went from R2 to R1, which is 2 acre zoning. That is why they are asking for a Special Exception.

The existing conditions are 85'x135'. The zoning requirement for the setback to the road is 40' and from the side and rear 25'. It meets the 25' rear and side setbacks. It does not meet the 40' frontage setback. They are asking for the Special Exception to allow building in the front setback.

He read from the Zoning Ordinance Section 1.05(B):

"Where an existing structure violates the setback requirements, horizontal expansion of the structure within the setback may be allowed if granted a Special Exception by the ZBA. The ZBA shall grant the Special Exception only if the following conditions are met:"

He stated, if all conditions are met, the Zoning Board must approve the application and if one is not met, it cannot be approved.

The first criterion is: "The expanded structure is no closer to the lot line than the existing structure." Mr. Filion stated the existing structure is 27' from the road. The proposed garage would be 29' from the road, which is 2' further back than the existing structure.

Criterion b: "The expansion is not in the 100-year floodplain." Mr. Filion stated it is not in that floodplain.

Criterion c: "The owner demonstrates that no other expansion, which reasonably fulfills the intended purpose, can be achieved in conformance with this Ordinance." Mr. Filion stated, if you use the 40' front setback or the 25' rear setback, you only have 20' to go in there and it would violate the setback one way or the other.

Criterion d: "Sanitary sewage disposal and water supply are provided if needed." Mr. Filion stated the property does have Town water and sewer and there is no increase in usage, because of a garage.

Criterion e: "The expansion shall not render the lot proportionally less adequate." Mr. Filion stated this criterion does not apply. The only place it applies is in the B1 zones, where you have criteria that states no more than 10% of the lot may be built on. So, this criterion does not apply to residential properties.

Criterion f: "The expansion does not adversely affect abutting properties, public health, safety or general welfare." Mr.

Filion stated there would be no affect on properties. This will help get one car off the road in the winter. It will look better having it garaged. He could see no public, health, safety or welfare considerations with the property.

He stated he felt they met the criteria and would like to have the Special Exception granted.

Chairman Hawkins showed a plan, made by Diane Hardy, showing the property is not in the 100-year floodplain.

Chairman Hawkins opened the public hearing.

Ed Wojnowski, Town Administrator, 150 North Road, Brentwood, stated he was here to speak in favor of the project. It is a great opportunity for Mrs. Bickford; it will not diminish any property values in that area and will be of benefit to the Town assessment-wise. It is a positive opportunity for Mrs. Bickford and the neighborhood. The abutting property is in a trust and Ed Wojnowski is one of the names on that trust.

Stanley Wojnowski spoke on behalf of his mother, Helen, who lives on the abutting property. He stated he looked at the plans for this application. He stated the zoning setback is 40' from the street. He stated his mother had no problem with the construction of the garage, but there are a couple of things he wanted to talk about. The garage is going to be 34' from the property line. He found a potential error. On the existing conditions plan, it has the name "Bernard Connor" and the word "Jacques" is crossed out. The gentleman's name is "Bernard E. O'Connor". He felt it was not professional to have that crossed out. He also noticed the Filion and Labranche properties have no street numbers on the plan. He found that surprising. He also stated, on the plan, it said "Edward & Helen Wojnowski". That should be "Helen Wojnowski". His mother is still alive and owns the property. On the top of the Existing Conditions sheet, the date is October 15, 2011. He assumes that applies to both sheets. There is no date on each sheet submitted. He felt that was unusual. He did not know the guidelines, but wanted to bring that up.

On the "Proposed Conditions", he stated his mother has no problem with the garage being built on the range line of 34'. He stated, if you take the ruler on the back edge of the house and look down, the scale is wrong. The back of that garage is 32' from the property line and not 34'. He went over to the Board and showed them his measurement. His mother has no problem with 34'. They do not want the 32'. By the time you allow for the overhang of the roof, you're another foot and a half into the property setback. Diane Hardy stated the rear setback requirement is 25'. Even if it was 32', it would still be in compliance with the rear setback. Chairman Hawkins stated, even if the drawing is off, the intention of the applicant is to keep the garage setback at 34'. Stanley Wojnowski stated the drawing should be revised. Chairman Hawkins stated he appreciated the fact the drawing was not quite to scale, but the measurement stated and intent is to set it back 34'. He stated on the record that the understanding of the Board is the rear setback will be 34'. Stanley Wojnowski felt it should be redrawn and resubmitted.

Stanley Wojnowski asked what the construction hours would be. Diane Hardy stated there is a Town noise ordinance that regulates this.

Stanley Wojnowski asked if the Board will require a plan revision before construction may begin, assuming this is granted. Chairman Hawkins stated they applicant had submitted a building permit application to the Office of Building Safety for review. He stated it was denied pending the outcome of what happens tonight. If the Special Exception is granted, the Building Official will issue the permit if it complies with codes.

Stanley Wojnowski stated he was disappointed the certified letter to the abutters came to his mother's house with his brother's name on it and not his mother's name.

Helen Wojnowski asked how many feet from her boundary the building will be. Chairman Hawkins stated the back of Mrs. Bickford's building could be no closer to the property line than 25'. Right now it is 34', so she is 9' farther away from the abutting property line than she needs to be. Helen Wojnowski stated her husband had wanted to build a shed and they were told they had to move it to 35'. Chairman Hawkins stated there was a different requirement for each setback. He did not know what the situation was with her shed. Helen Wojnowski stated they said they had to be 35' from the

boundary, so they couldn't do it. Chairman Hawkins stated, for this application, the garage was not going to be any closer to the boundary than Mrs. Bickford's house is. It is set back 9' further than the ordinance requires. It will be even with her house. Even if it was 32', it is still permitted. Helen Wojnowski stated she had no problem, as long as it went along with the boundary and it was no closer than her house. Chairman Hawkins stated that was their intention.

Chairman Hawkins stated on the "Existing Conditions" plan the abutter's name is listed as Bernard Connor and his name is actually Bernard E. O'Connor, that raised a question about notice. The official legal notice was addressed to Bernard O'Connor of 28 Packers Falls Road and it is reflected that way on the abutters list. So, Mr. O'Connor got a certified notice of the application.

There were no further comments and Chairman Hawkins closed the public hearing.

Action

Motion: Bob Daigle made a motion to close the public comment portion of the meeting

Second: Wayne Rosa

Vote: All in favor

Chairman Hawkins asked for clarification from Leo Filion that there was no sewer or water hookup involved, no toilet or sink. Leo Filion stated it was just a garage for a vehicle. There may be electricity.

Leo Filion stated the setbacks will be checked by the Building Official to make sure they are met.

Action

Motion: Wayne Rosa made a motion to grant the Special Exception to permit the replacement of an existing porch with a single car garage, the lot is located at 1 Lafayette Street, Tax Map U1, Lot 32, Zone R1

Second: Bob Daigle

Vote: All in favor

Rules of Procedure – First reading of amendments to Zoning Board Rules of Procedure reflecting the recent legislative change regarding "Alternate" members.

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.

There are two readings required for amendments. They will take up the second reading at their next meeting and then they will be able to vote on the amendment.

Agenda Item #4 – New/Old Business

None.

Agenda Item #5 – Adjourn

Action

Motion: Bill Barr made a motion to adjourn at 7:39 p.m.

Second: Gerry O'Connell

Vote: All in favor