**NEWMARKET ZONING BOARD OF ADJUSTMENT MEETING**

**APRIL 15, 2019**

**MINUTES**

Present: Chris Hawkins (Chairman), Bob Daigle (Vice Chairman), Diane Hardy (Zoning Administrator), James Drago, Connor Crowley (Alternate), Jonathan Sack (Alternate)

Absent: Steve Minutelli – excused

**Agenda Item #1 - Pledge of Allegiance**

Chairman Hawkins thanked and acknowledged Richard Shelton, a recent ZBA member, for his time and contributions to the Board.

**Agenda Item #2 - Review & Approval of Minutes: 04/01/19**

Deferred to next meeting.

**Agenda Item #3 - Regular Business**

***Shawn Ford/John & Lenore Palmer - Public hearing for an application for a Variance from Section 32- 89, of the Newmarket Zoning Ordinance, to permit the renovation of the existing home, with a front yard setback of 1.4’+/- from Ash Swamp Road, where 1.4’ presently exists and 40’ is the minimum required, and to allow a left side yard setback of 12’+/-, where 12’ exists and 25’ is the minimum required. The lot is located at 230 Ash Swamp Road, Tax Map R4, Lot 20, R1 Zone.***

Chairman Hawkins stated this is the blue house at Four Corners.

He appointed Connor Crowley to sit for Steve Minutelli for this application and Jonathan Sack would sit for the next application for Newmarket Holdings LLC.

Derek Durbin, attorney for Shawn Ford, presented the application. Chairman Hawkins explained the Board had read his application and now was the time for Attorney Durbin to add to it or highlight anything he wanted to present.

Attorney Durbin stated the home is nonconforming and encroaches into the side and front setbacks. Mr. Ford intends to renovate and bring the home to current codes. It has been unoccupied since 1996 and has lost its grandfathered status as a lawful nonconforming structure. The property has been in Lenore Palmer’s family for several decades. Due to health setbacks her husband suffered in the 1990s, they were unable to keep up with the property, after they moved out, and it ended up in a condition, where they were unable to rent it. The home does have a lot of sentimental value. One of their desires is for renovation of the existing home rather than having it torn down. It has been modified many times over the past century. It does have some historical significance, which is noted in the narrative. At one point it was a school house.

Attorney Durbin stated the ordinance states the control of setbacks is important for a variety of reasons. It is to provide for safe ingress and egress, site distance, and room to turn around. It is also to preserve the character of surrounding properties, not to have homes encroaching on each other or creating a fire or safety hazard. This home has existed in this configuration for several decades. The driveway is relatively wide. It is located a little more than 50’ from the intersection. Vehicles enter and exit there currently. The house is set back approximately 5’ from the road. The setback requested is greater, because there will be stairs that encroach further. There is adequate site distance and space for vehicles to safely enter and exit the property. If renovated, it is in keeping with the spirit and intent of the ordinance, as it relates to the front yard setback relief sought. The existing house is located a significant distance from the nearest abutting property to the north, which is relevant to the side yard relief. The closest structure is a significant distance away and it is not a concern.

The renovation will be an improvement in the neighborhood that will not negatively affect the essential character of the neighborhood. It will improve the neighborhood and values and create a similar appearance to what exists with other homes.

The applicant intends to renovate the home and sell it at an affordable price, where a younger family or an individual could purchase it. That is in keeping with the Master Plan and the intent of the ordinance to create affordable housing opportunities. Bringing the house to current code will mitigate any fire safety and public hazard concerns that exist with the structure in its current condition. It is run down structurally and is sound in terms of its foundation. The structure is in really rough shape.

Substantial justice will be done by granting the variance relief. There would be no gain to the public by denying it. The structure is already lawfully nonconforming, with respect to the setbacks. The landowner would suffer a loss, if the variance relief was not granted. It is an economic loss in not being able to sell the property, but also to be stuck with a property they cannot afford to maintain.

Surrounding property values would be increased by the improvements made.

The property does have special conditions that make it distinguishable from surrounding properties. It is a preexisting nonconforming lot of record that already contains a home that violates the setback provisions. It is a corner lot, which is relevant. Had someone occupied the residence from 1996 on, this would not be before the Board, if the applicant was proposing a renovation.

There is no fair and substantial relationship between the general purpose of the ordinance and the application for this proposal. The use is reasonable. The R1 zoning district is low density, by definition. Single family homes are encouraged. This property will have a single family home use. This will improve the property in a manner that will conform in appearance to other structures in the neighborhood. It will be a safe structure that meets the code.

***Chairman Hawkins opened the public hearing.***

There were no comments.

***Chairman Hawkins closed the public hearing.***

Diane Hardy stated today she received a notice from the Department of Environmental Services (DES) indicating they approved the septic system for this site. There was a question of the condition of the system and it was reviewed by DES and that has been cleared.

**Action**

**Motion: Bob Daigle made a motion to approve this application based on the information provided in the application package and on the fact that it is similar to houses along Ash Swamp Road, particularly just down the street by Price’s Garage, those houses do encroach into the setback, it is in keeping with the neighborhood**

**Second: Wayne Rosa**

Chairman Hawkins reiterated and stated that the motion is to adopt the application as their findings. Bob Daigle stated yes.

**Vote: All in favor**

***Newmarket Holdings, LLC - Public hearing for an application for a Variance from Section 32-89 and a Special Exception from Section 32-46, of the Newmarket Zoning Ordinance, to permit adding two dwelling units to the existing building, for a total of seven dwelling units on a property of less than two acres. The lot is located at 72 Main Street, Tax Map U2, Lot 53, M2 Zone.***

Jonathan Sack filled in for Steve Minutelli for this application.

Attorney Derek Durbin represented the applicant. He had submitted a detailed narrative with the application package. The property is roughly a third of an acre in size, at 0.32 acres. It contains a three and a half story building, which is a mixed use building. It contains La Catrina, a restaurant, on the bottom floor. Above that are two floors containing apartments. There are five apartments. The top floor is unfinished attic space. The proposal is to convert the unfinished attic space into two studio apartments. There will be one bedroom and one bathroom open concept studio apartments. The property also has the benefit of fourteen legally dimensioned parking spaces. There are additional parking spaces on the property, as well. They are not legally dimensioned. They have been historically used by tenants of the property and others that visit the property.

He stated the applicant seeks a variance to allow seven dwelling units on less than two acres. It is lawfully nonconforming in its current state. The applicant seeks a special exception relative to the expansion of the multifamily residential use.

If these are granted, Site Plan review, by the Planning Board would be required, where a lot of the site specific concerns will be addressed. They are a little ways off of anything being done there, even if passed tonight. The reports by Mark Fougere address the special exception requirements.

To Criterion 1, Attorney Durbin stated this is not unlike the surrounding properties, it is lawfully nonconforming. Many of the surrounding properties have less acreage and are typical historical postage stamp (size) lots, where there is high density and a small lot area. This is a big lot for downtown. It could be argued that the maximum number of dwelling unit restriction in the ordinance is not reflective of this particular area of Newmarket, where there is higher density. In the purpose and intent of the M2 district, high density is actually encouraged. The Master Plan also encourages higher density in this downtown area. This could be an infill project. They are not proposing exterior renovations and not expanding the footprint. It is housing the additional units within and keeping up the architectural appearance. Adding the two units will create an affordable housing opportunity. For those reasons, he would submit it is in keeping with the spirit of the ordinance and in the public interest to grant the variance and special exception.

Substantial justice will be done by granting the variance. The equitable balancing test here is the property is already nonconforming with respect to dwelling units per acre. The hardship is the property owner cannot make the highest and best use of their property, in not being able to add to that significant unfinished space.

The values of surrounding properties would not be diminished by granting this variance relief. There will be no visual impact. Light, air and space between abutting properties will be preserved. There is no exterior encroachment into the setback.

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. The property does have special conditions that distinguish it from other surrounding properties. The size of the property and the abundance of parking taken together are special conditions. The fact it is lawfully nonconforming is a special condition. Owing to these special conditions, he would submit there is no fair and substantial relationship between the provisions of the ordinance and the application to this proposal. The dwelling unit per acre restriction is truly a density control to lessen overcrowding. Those concerns do not come into play. There is some conflict between the provisions of the M2 zoning district. The spirit and intent encourage density in this area. The proposed use is reasonable. Multifamily is not prohibited.

He showed a plan of the property. He had an engineer present to answer any questions.

***Chairman Hawkins opened the public hearing.***

No comments.

***Chairman Hawkins closed the public hearing.***

Wayne Rosa asked about the parking and its location. Attorney Durbin indicated the parking spaces on the plan. They have fourteen spaces. Diane Hardy explained parking is treated differently in the M2 district. There are options provided under site plan regulations, including joint parking with other property owners. You get credit if you are within so many feet of public parking. It has to be evaluated on a case by case basis. This recognizes that these lots are tiny and have historically been developed without adequate parking. Wayne Rosa stated he is very familiar with that lot and there is adequate parking. He had no problem with it.

Jonathan Sack asked if there had been any problem, where a lot of people stop to pick up takeout food in that area, would the management of that change at all. Matt Lyle, co-owner of the property, stated takeout has not been that big of a part of their business. It is more that delivery services will come in and get multiple orders. It has not been a part of it or caused any disruptions. Jonathan Sack asked about possibility of a drive-through to the right of the building. Attorney Durbin stated the parking spaces are counted among the fourteen spaces. They had taken one space out for a dumpster.

Attorney Durbin stated parking does not really exist on other properties and it makes this particularly unique.

Chairman Hawkins asked if there were ever apartments in this space. Attorney Durbin stated there were two units that had two stories and it was partitioned off. There is currently no secondary means of egress, but he was under the impression if they put sprinklers throughout the building that would be negated. Diane Hardy stated they have been working with the Fire Dept. on these requirements. That is part of site plan review by the Planning Board.

Bob Daigle asked if any of these parking spaces are associated with La Catrina. Attorney Durbin stated some of the owners live there. The spots on the right are the restaurant’s spaces. There are fourteen conforming spaces. They get the spaces on the right and the owners get two spaces, because they live there.

Wayne Rosa asked if they rent spaces. Attorney Durbin stated the owner rents a space at 80 Main Street.

Wayne Rosa stated, as long as there is adequate parking, he has no issue. It is good use of the building and there are no changes to the outside. Chairman Hawkins stated sprinkling the building is a good thing. There was an incident years ago at another location in town, where the fire suppression system went off in a restaurant and the apartments above only had one way out.

A fire suppression engineer had done a report and had presented it to the Fire Chief.

Bob Daigle asked if the top floor had been finished at one time. Attorney Durbin stated there was no bathroom or kitchen, but plastered walls were there.

**Action**

**Motion: James Drago made a motion to adopt the submission by the applicant as the findings of the Board and approve the variance and special exception**

**Second: Bob Daigle**

**Vote: All in favor**

**Agenda Item #4 - New/Old Business**

Chairman Hawkins mentioned the Spring Conference.

**Agenda Item #5 - Adjourn**

**Action**

**Motion: Bob Daigle made a motion to adjourn at 8.02 pm.**

**Second: James Drago**

**Vote: All in favor**