**NEWMARKET ZONING BOARD OF ADJUSTMENT MEETING**

**JUNE 3, 2019**

**MINUTES**

Present: Chris Hawkins (Chairman), Wayne Rosa, James Drago, Steve Minutelli, Connor Crowley (Alternate), Jonathan Sack (Alternate), and Diane Hardy, Zoning Administrator.

Absent: Bob Daigle – excused

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

**Agenda Item #2 – Review & Approval of Minutes: 04/01/19 & 04/15/19**

This item will be taken up at the next meeting.

**Agenda Item #3 - Regular Business**

***Moody Point Community Association - Public hearing for an application for a Variance from Section 32-155 (C)(3) of the Newmarket Zoning Ordinance, requested by Moody Point Community Association to permit construction of a riprap barrier in the wetlands area (Hydric A, very poorly drained soils, and 50 foot buffer) to prevent further erosion and degradation of the property and Great Bay, where severe erosion has caused shoreline soils to be completely undermined. Without this stabilization, the slope will continue to erode causing existing trees and vegetation to collapse, die, and, in turn, expose the embankment to further rapid erosion resulting in sedimentation of the surrounding tidal estuary and river mouth. The lot is located at Cushing Road, Tax Map R2, Lot 36-4, R1 Zone.***

Jonathan Sack recused himself.

Chairman Hawkins appointed Connor Crowley to sit in for Bob Daigle.

Chairman Hawkins reviewed the procedure for the meeting. He advised the applicant the Board has read all of the material and explained this was his time to go over the criteria and highlight and/or add further information for consideration.

Joshua Lanzetta, attorney at Bruton & Berube, represented the applicant. He stated he will be as brief as possible, while hitting all of the high points of the application and with the understanding the Board has reviewed the application material. He thanked Diane Hardy, Zoning Administrator, and Susan Jordan, Administrative Assistant, for their support during the application process.

Attorney Lanzetta stated he would first like to orient the Board to the project, the problem, and the proposed solution.

Attorney Lanzetta showed a PowerPoint presentation. The community consists of about 100 residences. He showed the area involved in this application. There is a pier that juts out into Great Bay. There is also the screen house in that vicinity. It is about 800 sq. ft., with a 1500 sq. ft. wrap around deck. It is located almost at the high water mark, right on the shore. It is a very unique piece of property. It is on the western side of the estuary. It is unique, because it has a lot of different hydraulic effects. There are four water bodies that affect this point and cause severe erosion, because there are multiple current and tidal issues swirling around this point. The other unique factor about Moody Point is that it is subject to a high amount of wind fetch. They are talking about wind velocities that are unobstructed from the bay and are pounding the shore, which is resulting in storm surge. This is unique, because what is categorized in their slope stabilization application as a broad range of fetch and the resulting storm surge is multidirectional. So, because this is a point of land sitting on the western edge of the bay, it is getting wind fetch from approximately 2.7 miles unobstructed from the Piscataqua River. You have 1.1 miles of unobstructed wind coming up the Squamscott River. The worst wind is coming from the direct east from the Tradeport, all the way across 3½ miles of bay. They are just slamming into the point. What they have is this intense erosion and resulting sedimentation from that erosion, which is causing property damage. It is starting to get more rapid and exponential, because, as they lose topsoil and they lose root structure, all of the flora is starting to lean and pull out. He showed photos of the area and he stated they do not do it justice. If you go out to the property, you can see the embankment is a “C” shape. They are dealing with about 180’ of stabilization, on the point, right where the dock and screen house are. The entire embankment to the left of the pier is gone. The trees in the photos were leaning 30-40 degrees. It is not only a horrible environmental situation, but it is a public safety hazard. You can’t walk at the edge of the bank, because it is degrading. It needs to get shored up or all of these trees will be lost. This is habitat that is very important to the estuary and the surrounding land and affects Mash Elders which are considered endangered species.

Attorney Lanzetta stated, as a solution, they are suggesting a riprap barrier. They are proposing shoring up three different zones with riprap and jute mats, which are made with coconut fiber. They are interesting, because they are biodegradable and any sort of flora can grow. The idea is to create this living barrier. This has been around for a while and has recently become en vogue. He showed photos of riprap and jute mat. They have three sites, where they are proposing to do the stabilization. It is an area of about 18-linear feet. They are calling the sites one, two and three. The first site is on the far west, the second is around the point on the other side of the pier and the last is where the screen house is. The total square footage of permanent impact is approximately 2400 sq. ft. There is a temporary impact area of just under 5000 sq. ft. That is the staging area for the work required to get these in place. It is still in the buffer. In the NH DES approval, the permit contemplates impacts of about 7400 sq. ft.

Attorney Lanzetta stated it was worth noting that they believe this alternative has the least impact. It was a two year collaborative effort on the part of the Association members and a number of State and federal agencies. As you read the NH DES letter prefacing the permit they received, you can see they went through a number of designs and made a number of changes. Each respective agency approved the application. They worked with the Natural Heritage Bureau and they found no major concerns in the final version of their application. NH Fish & Game found sufficient measures for the replanting of trees for bald eagle habitat. They also have accounted for and changed the design of the barriers to account for the Marsh Elders that are present. They will not affect any of the flora that are threatened on the embankment. The Pease Development Authority found no negative impacts. NH DES and Army Corps of Engineers gave them a permit finding minimal impact to waters of the U.S., which is Great Bay, because it is navigable. NH DES found that this did not rise to the level of requiring a hearing. They also worked with the Newmarket Conservation Commission and they unanimously have recommended the issuance of the permit and wrote to NH DES to approve the application. They believe they have a very good proposal to deal with erosion, stop sedimentation and property damage on a very unique property that has an innate hardship in that the shape of the property and the natural factors that affect the property are out of our control.

They are not able to alter any part of the property that is in the wetlands buffer. There is no way to comply with the ordinance. There is no way to deal with this property and work at the water’s edge to stop the erosion, which is why they are seeking the variance.

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

No comments.

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

The Board members had no comments or questions.

Chairman Hawkins proposed they adopt the application and material submitted as the Board’s findings for each of the five criteria and entertain a motion to approve the application, as submitted.

**Action**

**Motion: Connor Crowley made a motion to approve the application, as submitted, and to adopt the application materials as the Board’s findings for each criteria**

**Second: James Drago**

**Vote: All in favor**

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

Chairman Hawkins stated he and Jonathan Sack attended the Planning and Zoning Conference on Saturday. It was interesting. Jonathan Sack stated it was great for a new Board member.

Chairman Hawkins stated there are some legislative changes. One thing they need to look at is changing their Rules of Procedure to reflect their method of voting, whether they do item by item or vote on all five criteria as a whole. This Board does it as a whole and it seems to work well.

There was discussion at the conference on whether it was appropriate to have a pre-written motion. There was a question of whether that was pre-judging an application. Wayne Rosa stated the person writing it was an individual who was not representing the whole Board.

Chairman Hawkins stated there are some smaller changes coming, too. He had written material for the Board. Chairman Hawkins stated, under current law, you have to hold a hearing within 30 days of the receipt of an application. This is changing to 45 days. He felt this Board should stay with the 30 day window.

There was a discussion of upcoming cell tower changes.

Chairman Hawkins stated the legislation is pending on whether they will put in another appellate body to hear land use appeals. It would be a State board.

**Agenda Item #5 – Adjourn**

**Action**

**Motion: Wayne Rosa made a motion to adjourn at 7:35 pm.**

**Second: James Drago**

**Vote: All in favor**