

**NEWMARKET ZONING BOARD OF ADJUSTMENT MEETING**

**JUNE 1, 2020**

**MINUTES**

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

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

**Agenda Item #2 - Review & Approval of Minutes:**

**1/06/2020**

**Action**

**Motion: Bob Daigle made a motion to approve the minutes**

**Second: Wayne Rosa**

**Vote: Wayne Rosa, James Drago, Connor Crowley, and**

**Bob Daigle, in favor, Chris Hawkins, abstaining, as he was not present.**

**01/13/20**

**Action**

**Motion: Bob Daigle made a motion to approve the minutes**

**Second: Wayne Rosa**

**Vote: Wayne Rosa, James Drago, Connor Crowley, Chris Hawkins, in favor**

**Bob Daigle abstained**

**4Agenda Item #3 - Regular Business**

**Kaitlyn Ferretti (90 Main LLC) - Public hearing for an application for an Appeal from Administrative Decision, reference Section 32-10, of the Newmarket Zoning Ordinance, regarding the change of use of the first floor from a tattoo parlor to a cat café. The first floor will be divided into two parts, a café side with food prep/kitchen, bathroom, and some seating, and the other section would be a relaxed lounge space with seating and a few adoptable cats from Cat Tales Rescue. The proposed use, specifically the boarding and adoption of rescue animals, was determined by the Town to be not allowed by right in the M2 Zone. It does not fit with the current definitions and permitted uses. The property is located at 90 Main Street, Tax Map U2, Lot 31, M2 Zone.**

Attorney Angela Hayden, Sage Legal LLC, represented the applicant. She described the application. She described the cat side of the business. Regulations relating to cat rescue are quite voluminous. They require veterinary oversight, health certificates, and vaccinations. Animal rescues will vet families for potential adoption. This is why Ms. Ferretti partnered with a cat rescue. This is the way cat rescues are structured. The Tipsy Tabby is not a cat rescue, but they will provide a way for people to connect with adoptable animals. The cat rescue criteria will be firmly in the hands of Cat Tails rescue. This is a common way other cat cafes have structured their businesses. This is a developing industry and it is very exciting the first one in NH would be in Newmarket. She knows several people who have become aware of this project and they are very excited. She grew up in Pittsfield, NH, and lived in Georgia for the last five years, where she worked in a veterinary hospital. She was in charge of anesthesia. It was a dentistry practice, with 2-5 surgeries a day. It was very rewarding work, but she always enjoyed her volunteer work at the rescue. On her birthday, her husband, John, brought her to Java Cats, which was a new cat café that had opened in Marietta. When they got there, she knew that was what she wanted to do. Everyone in there had a smile on their face, a hot drink in their hand and a potential new family member sitting in their lap. It was a perfect way to combine her love for animals with her love of working with the public. As an anesthesiologist, she didn’t see people all day. An opportunity came along to come to NH and they ended up in Newmarket. They liked the property they were purchasing and finding this vibrant town was just a bonus. She looked at Portsmouth, but could not say no to Newmarket. For example, they are on the bus line for college students, who would love the cats, since they can’t have animals in their dorm.

Chairman Hawkins asked who was in charge of the cats. Kaitlyn Ferretti stated Cat Tails Rescue. They take care of their medical and adoption needs. She will have staff on site making sure the cats are safe and customer interactions with the cats are safe. Cat Tails has a lot of volunteers who are excited to be part of this and will be checking in. The NH Department of Agriculture will determine how many cats we can have.

Chairman Hawkins asked if they felt the use met the definition of service. Attorney Hayden stated yes and the letter from the Town acknowledged that it did. It was the cat side that was in question. The denial letter saw it as a cat rescue. The rescue has a different function and requirement. The cat side is more of a service. You are providing opportunities for adoptable animals, who can tolerate the environment. Not all cats will be able to do so. The cat rescue is very cognizant of that. The cat side of the business is creating an opportunity for the cats to meet the public, like a Petco adoption event. There are a lot of social and psychological benefits of being around cats. Even more so these days.

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

Kaitlyn McPortland, 55 Main Street, stated she owns cats and was excited about the business. She thought it was a service and she could go to the café and hang out with the cats. She is looking forward to it.

Jessica Goudreau, 27H Piscassic Street, felt it would be a valuable addition to downtown. She is a cat lover and has told friends about it and they love it and want to visit. It would be a draw to Newmarket and really helpful on an individual level.

Katharine Steer, 8A Bay Road, stated she was a huge supporter of this, as a concept. When she posted on her Facebook page that this may happen in Newmarket, she had comments from as far away as Nashua and northern NH from people stating they will definitely be coming to Newmarket now just to visit the cat cafe. It will definitely be a draw.

Joshua Raymond, Springdale, ME, stated he has been friends with the Ferrettis for about a decade. Being from southern Maine, news about The Tipsy Tabby has spread even to there. A lot of people are excited and willing to travel, not only for The Tipsy Tabby, but to visit other businesses in town.

Carly Anderson, Hooksett, NH, stated she was very excited about the cat café. She and her fiancé are always looking for places to go to sit and enjoy the state of NH. Being animal lovers, the animal therapy and being around cats, being in a small business that is not a huge corporation and being able to explore a town like Newmarket would be amazing. She has shared this on Facebook and people she knows in Salem, NH, and northern MA are ready to come to Newmarket for it.

Ben Small, Marietta, GA, stated he has known the Ferrettis for a long time. They are a very ambitious couple, who always go above and beyond to accomplish the goals they set. He sees this business thriving and they will do an amazing job.

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

Bob Daigle asked why they chose to define the use as a service. Attorney Hayden stated that seemed to be the most fitting with what is happening with the cat side.

Diane Hardy stated she is the Zoning Administrator for the Town. When this came in as an inquiry, she had consulted with the Building Official and Town Counsel regarding interpretation of the zoning ordinance, as it didn’t quite fit the definition of a service. This property is located in the M2 zoning district, which is our downtown area. This zone provides for a variety of uses that are typically found in a downtown. In the 14 years she has worked here, this is the first appeal of a staff decision that has been made. There is a Table of Permitted Uses in the Zoning Ordinance. There is an array of uses listed in this mixed use zone. This business is a combination of two uses. That immediately raised red flags for her. She realizes this is a very new idea in NH and she applauds the applicant for her ability to come forward with a very creative proposal. This is very unique. It is the first in NH. She looked at this as a combined use and there were impacts associated with it that should not be overlooked, such as public health and safety. This is licensed by NH Department of Health & Human Services (NH DHHS) and the Department of Agriculture. Ms. Ferretti put together a very comprehensive application, which addressed many items that came up initially. Diane Hardy stated she had been skeptical at first. Because it is so unique, she consulted with legal counsel. If a specific use is not listed in the table, it is not allowed. There was nothing listed in that zone like animal shelters or boarding facilities. She was advised by legal counsel to take a very conservative approach. She does support the idea of this business.

Chairman Hawkins stated the initial denial was very appropriate and it is appropriate for this to come before the Zoning Board and for the public to be able to comment.

Diane Hardy stated she has conditions if the Board decides to approve this. That the applicant will comply with all applicable State and Federal laws and local ordinances, including without limitation any requirements of the Department of Health and Human Services, Department of Agriculture, Food & Drug Administration and any other requirements that may apply.

Bob Daigle asked if she had financial backing. Kaitlyn Ferretti explained that she did.

**Action**

**Motion: Chris Hawkins made a motion to grant the appeal and permit the use on the express condition that the applicant will comply with all applicable State and Federal laws and local ordinances, including without limitation any requirements of the Department of Health and Human Services, Department of Agriculture, Food & Drug Administration and any other requirements that may apply**

**Second: Bob Daigle**

**Vote: Wayne Rosa, Steve Minutelli, Bob Daigle, James Drago, Chris Hawkins in favor**

**Northpoint Realty Inc. - Public hearing for an application for a Variance, reference Section 32-56, of the Newmarket Zoning Ordinance, to permit the construction of a duplex in the R2 Zone, where duplexes are not permitted. The existing house and outbuildings will be demolished. The property is located at 258 Wadleigh Falls Road, Tax Map U4, Lot 68, R2 Zone.**

Attorney Tim Phoenix, Hoefle, Phoenix, Gormley & Roberts PLLC, represented the applicant and went over the application. Attorney Monica Kieser was also present with him in his office. Others dialed into the meeting for the applicant were Paul Rabenius, Northpoint Realty, and Brenda Kolbow, T.F. Moran.

Attorney Phoenix showed a plan of the property. The parcel is a little over five acres. It is on the Piscassic River. On the lot is a house and outbuildings in poor condition. The buildings are over or very close to the lot lines. The applicant originally looked at subdividing and putting a house on the two lots resulting from that, but the lot is constrained by the wetland and related buffers. Where this is in a transitional zone between less dense R1 and the M3 more dense zone, it seemed reasonable to put a duplex on the large lot. Duplexes are not allowed, so a variance is necessary. Having a duplex, no dimensional relief will be necessary and it will be outside of any wetland buffer, which would be better for the environment.

He showed an aerial view of the area. He showed the location and the other buildings in the area, including the Elementary School and assisted living facility.

He showed photos of the buildings on the property, some in very poor condition.

He showed the location of the duplex on the plan and showed an elevation drawing.

He went over his responses to the five criteria for a variance. The Board had read them prior to the meeting.

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

Liz Dowst, 255 Wadleigh Falls Road, across the street. She has known the former owners for about 23 years. There is a lot of prime wetland. She asked why they are packing a duplex there instead of a really nice single family. It would have less impact on the environment. She asked what would stop another house from going in or further subdivision. It is a special space along the Piscassic River and the conservation area.

Olivia Albee, 262 Wadleigh Falls Road, next door. She agreed with Liz Dowst regarding subdivision. She and her husband had no problem with the duplex. They would love to get rid of the buildings that are very close to their lot.

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

Attorney Phoenix stated the applicant is trying to protect the conservation and wetland areas. If they subdivide, one of the homes will be in the wetland. Any further subdivision would have to come back to the ZBA. He does not believe the ZBA would want to grant the relief and he believes the applicant just wants to build this duplex.

Paul Rabenius stated they had looked into two houses on the property. He does not push as much as possible onto a lot. He likes to stay away from any environmental features. He wants to bring that area back to what was a natural buffer at one time.

Diane Hardy stated corrections had been made on the plan since the earlier submittal and it now reflects correct information regarding setbacks and buffers.

Chairman Hawkins stated the key question was, if there was no Shoreland Protection Zone, could there be two structures on the property. Diane Hardy stated there was a very small area of buildable land which could accommodate and additional structure. Currently the buildings are nonconforming and substandard and is right on the frontage of the lot. So, there are benefits to this proposal in bringing the lot into greater conformity. The Town does not have the ability to control future variance requests, if an applicant wants to try to do anything further on the lot at some later date.

Chairman Hawkins asked, if there was no Shoreland Protection Zone on this property, could two structures be built on this property in compliance. Attorney Phoenix stated yes, they could have as little as half an acre. They have enough frontage. Diane Hardy stated the Town has regulations for wetlands and shoreland, so there are overlapping jurisdictions. The local requirements are more stringent, in some cases. In order to determine if two structures could be built, you would need detailed site plans and have a soil scientist come out to verify soils. So it is not a simple question. Paul Rabenius stated they did have some research done, but not soil testing, and it showed there was a buildable area defined, if they were to subdivide. If this does not pass, they probably will try to subdivide and put up two buildings.

Bob Daigle asked what the buildable area was after excluding all the non-buildable areas.

Brenda Kolbow stated the original plan was for two lots. Once they got into trying to place houses, they decided to build a duplex. There is enough room for two houses on the land.

Diane Hardy pointed out that, in the R2 zone, the minimum lot size is a half-acre, with a density of two units per acre. If you set aside the buffers, you should get another house on that lot. Not a huge one. Bob Daigle said he could build two houses, but is looking to build a duplex, which reduces the impact. Diane Hardy stated, in the minimum lot size requirements, we exclude any very poorly drained soils from the calculation. She explained the soil calculations in determining lots on a piece of land and suggested they could go to Planning Board to see if they had a viable subdivision and then come back to the ZBA.

Brenda Kolbow came back with a buildable land calculation of .66 acres of buildable land, excluding the yard setbacks and the 100’ wetland setbacks. It would still be included in lot size calculations. Bob Daigle stated there is a viable acreage to work with.

Wayne Rosa stated he did not believe they could vote against this based on future subdivisions or plans. There is an opportunity to improve the contents of the lot.

Paul Rabenius stated the property would be sold as a whole to the owner of the duplex. It would be difficult for him to do a subdivision after that.

Wayne Rosa stated the existing buildings could be made suitable for residential and that would not be good. He felt the duplex was a good choice for that lot.

Bob Daigle stated the location of the duplex precludes any subdivision.

**Action**

**Motion: Bob Daigle made a motion to grant the relief requested for the use and the submitted materials as Findings of Fact**

**Second: Wayne Rosa**

**Vote: Wayne Rosa, Steve Minutelli, Bob Daigle, James Drago, Chris Hawkins in favor**

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

None.

**Agenda Item #5 - Adjourn**

**Action**

**Motion: James Drago made a motion to adjourn at 8:33 p.m.**

**Second: Bob Daigle**

**Vote: All in favor**