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 Zoning Board of Adjustment

January 8, 2024 PM  
 Town Council Chambers  
 **APPROVED MEETING MINUTES**  
**Present:**, Wayne Rosa (Vice-Chair), David Evans (Zoning Administrator),   
James Drago, Steven Minutelli, Henry Smith (Alternate), and Al Zink  
**Absent:** Bob Daigle (Chair)   
  
The Vice-Chair called the meeting to order at 7:01 PM. [time on DCAT 2:16]

The Vice-Chair appointed Alternate Henry Smith to be a voting member this evening. The five voting members will be: **Wayne** **Rosa**, **James** **Drago**, **Steven Minutelli**,   
**Henry** **Smith**, and **Al Zink.**  
 **#1. Pledge of Allegiance  
  
#2. Acceptance of Minutes** There were no minutes this evening. **#3. Regular Business**    
Read by the Vice-Chair: [time on DCAT 3:51] **a. Variance request from *Section 32-88 Structure Height* and *Section 32-89 Dimensions Table* from Michael & Brittany Erlenbach to permit the construction of a 2-story home with a walkout basement that will exceed the maximum height of 35’ allowed, by 2’9”. The lot is located at 21 Hamel Farm Drive, Tax Map R4, Lot 42-11, in the R1 District.**Mark Filion was speaking on behalf of the applicants. He briefly read the criteria rebuttal asking for the variance as described in the application. He specifically pointed out the characteristics of the lot. As designed, the house would be built the same as other homes in the development and the walk-out basement would be appropriate for this design. Additional fill would be required in the backyard if the walk-out basement were deleted from the plan.  
  
The Chair opened the meeting to public comment at 7:08 PM [time on DCAT 10:09]

**Dave** reported that he had not received any communications regarding this matter and all the abutters were notified.  
**Henry** and **Al** both asked questions about the hardship criteria. Mr. Filion felt that the character of the colonial home would be diminished by the pitch of the roof i.e. it would not be an ideal standard for snow loads. **Al** asked again what was unique about the property. Mr. Filion responded that the land was the hardship as it slopes down in the backyard toward the Piscassic River and the septic must be placed in the front yard where there is space and the fill may be used.   
Sandra Erlenback rose to speak to the members. She stated that the proposed pitch of the roof and the walk-out basement would be identical to all the homes in the neighborhood as they all exceed the limit.

The Chair closed public comment at 7:45 PM.   
 **Action   
Motion: James Drago** moved to grant a variance request from Michael  
 Erlenbach, petitioning the Zoning Board of Adjustment for relief from  
 Section 32-89 *Dimensions Table* of the Municipal Code of the Town of  
 Newmarket ,New Hampshire to permit the single family home to exceed  
 the maximum structure height by 2 feet 9 inches on real property with  
 an address of 21 Hamel Farm Drive (Tax Map R4, Lot 42-11) within the  
 R1 zoning district, as the petition satisfies the 5 part test of the variance  
 statue, pursuant to RSA 674:33.

**Second: Al Zink   
Discussion:** none  
**Vote: Approved 5-0-0  
  
Dave** asked the applicant to come to his office in the morning so that he could issue the permit and they agreed to do so. **\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\***Read by the Vice-Chair: [time on DCAT 22:40] **b. Equitable waiver of dimensional requirements requested by Chinburg Development, LLC. 16 duplex building (32 units) on Green Road are 40’ 7” in height, which is taller than the allowed 35’ in *Section 32-89 Dimensions Table,* of the Newmarket Zoning Ordinance. The properties are located at Stonehill Point at Hersey Green, i.e. Green Road, Tax Map R5, Lot 132, in the R2 District.  
Shawna Sammis**, Assistant Land Development Manager for Chinburg Development LLC,rose to speak on behalf of the applicant who is completing the build out of Stonehill Point at Hersey Green. She is seeking an equitable waiver of dimensional requirements on what could best be described as and ‘administrative oversite’. They were unaware that the floor plan chosen exceeded the dimensions table. All the building permits have been granted. The project was approved in the 80’s, but they did not begin building it out until 3+ yrs ago - 38 total units including 32 duplex units in16 buildings on Green Road. They are all in the Hersey Green HOA. The Chair wanted clarification, **Dave** further clarified: most have occupancy now, 3 duplexes are currently under construction and one of these 3 is very near completion and final inspection. 2 others have all the framing, electrical and plumbing completed. Footings have been poured for the last duplex.   
The Chair opened the meeting to public comment at 7:29 PM. [time on DCAT 28:58]  
**James Drago** recused himself from the discussion and vote.  
  
The Chair asked Ms. Sammis if or how this error could be corrected. She believes that the cost would be prohibitive and that the vast majority of the units are occupied. That is why the equitable waiver is being requested.  
**Public Comment:**  
**#1 Charles Souza, 11 Green Road.** He was here this evening representing the Hersey Green HOA (the original 10 homes built on Green Road before Chinburg extended Green Road). He wants an investigation into how they got building permits: who signed the permits, who did the inspections and ‘never noticed’ that they were 5’ over the required 35’. He felt very strongly about town staff responsibility for this oversite**.** Chinburg blasted granite ledge and created dust and dirt for years during this construction. The HOA is planning to separate from the other units and will not insure them. **#2 Ken Strathie, 9 Green Road.** He distributed pictures for the members. He has lived there for 4 ½ yrs. He said that a buffer was promised to them by Chinburg, but that did not materialize. They also were never notified as abutters during the approval process with the PB. Chinburg came to the HOA residents to get their permission to approve a five year extension to build – not any approval of height change. The pictures shown to them were the architectural renditions of what they would have looked like with only 2 stories and with the buffers as proposed. The picture in color was taken this afternoon – no buffer at all – the project manager did a clear cut. He said that they obviously cannot tear them down now, but he really wanted to know where was the oversite and what is the Planning Board process. **Dave** described the process of the third party engineer during inspection. He would like to see Chinburg repair some of the issues in the neighborhood caused by their contruction – paving, sidewalk repair. Chinburg comes to them for approvals, but just goes in and does what he wants. He would like to see Chinburg penalized.   
**#3 Charles Souza, 11 Green Road.** He just thinks that the Town needs to do a better job with approving and permitting projects.   
**#4 Tyler Grant, 26 Green Road.** He has lived in his townhome for 1 year. He would not like to undergo construction to reduce the height of his home. He is sorry about the buffer and certainly understands the frustration of the neighbors.  
**#5 Joe Montague, 28 Green Road.** He, too, is sorry about the buffer and frustrations with Chinburg. He does not want the expense or burden of modifying his home.  
**#6 Charles Souza, 11 Green Road.** He rose again to explain that he does not want the buildings lowered, but he is very upset with the process. **Steve** said that the ZBA is a board of limited statutory authority.   
**#7 Ken Strathie, 9 Green Road.** He rose to ask if the ZBA has something other than approval of disapproval which they can do. He would like an explanation about why the homeowners need to do all the work in achieving a remedy. He does not want the ZBA to make a decision this evening, so that they have an opportunity to speak with counsel.   
  
The Chair closed public comment at 7:57 PM. [time on DCAT 58:23 ]  
 **Action   
Motion: Henry Smith** moved to continue the public hearing to February 12, 2024,  
 at 7:00 PM in the Town Council Chambers for an Equitable Waiver of  
 Dimensional Requirements pursuant to RSA 674:33-a from Chinburg  
 Development LLC for the non-conforming structures located on Green  
 Road (Tax Map R5 Lot 132) within the R2 zoning district.  
**Second: Al Zink   
Discussion:** none  
**Vote: Approved 4-0-1** (**James Drago** abstained) **Dave** will follow up on the concerns raised during discussion. **\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*  
#4. New/Old Business** [time on DCAT 1:00:56]  ***a. Meeting Proposal***  
As discussed at the previous meeting, the members wished to change the periodicity of the Zoning Board of Adjustment meetings from an as-needed basis to once per month.   
 **Action**  
**Motion: Al Zink** moved to solidify the calendar as presented by the Zoning  
 Administrator to change the ZBA meetings from an as-needed

basis to the second Monday once per month and to publish the  
 application deadlines based on those dates.  **Second: Steven MinutellienryH  
Discussion:** none  
**Vote: 5-0-0**  **#5 Adjournment** [time on DCAT 1:02:02]  
 **Action**  
**Motion: Al Zink** moved to adjourn the meeting at 8:00 PM. **Second: Steven MinutellienryH  
Discussion:** none  
**Vote: 5-0-0**Respectfully submitted,  
   
Sue Frick  
Recording Secretary

DCAT:  
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