

ZBA Minutes 09/22/11

NEWMARKET ZONING BOARD OF ADJUSTMENT SEPTEMBER 22, 2011 MINUTES

Present: Chris Hawkins (Chairman), Wayne Rosa (Vice Chairman), Gerry O'Connell, Bob Daigle, Bill Barr

Absent: Gerry O'Connell (excused)

Called to order: 7:00 p.m.

Adjourned: 8:03 p.m.

Agenda Item #1 – Pledge of Allegiance

Agenda Item #2 – Review & Approval of Minutes: 09/08/11

Action

Motion: Bob Daigle made a motion to accept the minutes with the editorial comments made by Diane Hardy

Second: Wayne Rosa

Vote: All in favor

Agenda Item #3 – Regular Business

Russell Serbagi, Jr. & Timothy Nichols-Acadia Engineers & Constructors – Continuance of a Variance reference Section 3.04, Setbacks, of the Newmarket Zoning Ordinance, to allow the redevelopment of the property with the demolition of the existing abandoned building and the construction of a new 20,000 sq. ft. building that will encroach within the 10' setbacks required by the zoning ordinance at the side and rear of the building. The property is located at 13 Water Street, Tax Map U3, Lot 4, M2 Zone. Continued from 09/08/11.

(Note: Gerry O'Connell had recused himself from this application at the last meeting)

At the last meeting, the public hearing had not been closed.

Action

Motion: Bob Daigle made a motion to reopen the public hearing portion of the meeting

Second: Wayne Rosa

Vote: All in favor

Chairman Hawkins stated they had received new information since the last meeting. He had an undated letter from Pastor Joshua Gray, of the Newmarket Community Church, an email from Rick Malasky, Newmarket Fire Chief, and a supplement submitted by the applicant for the variance application.

Tim Nichols, Acadia Engineers & Constructors, stated he has attempted to respond to the three issues raised at the last meeting in his supplement. He attempted to capture how they got where they are today and what has happened in the last two weeks. He also tried to be more specific about justifying the variance.

Chairman Hawkins stated they had all read the supplement. He felt it would be helpful if unnecessary hardship was addressed. He asked the applicant to summarize the points he made in his supplement. Tim Nichols stated there are special conditions to the property. The first is the Town's deeded easement. It is 16% of the total parcel area. It constrains infrastructure and building development along the entire eastern portion of the parcel and reduces the buildable port of the parcel.

Tim Nichols stated the easement was designed and constructed based upon a previously planned redevelopment of the property with a seven unit, three story residential condominium building. The layout of the easement and Riverwalk constricts the parcel for any alternate design of the site.

The configuration of the parcel is non-rectangular, it is L shaped, which makes the site restrictive for siting a mixed-used building that complies with all requirements.

There is a shallow depth to the forced main sewer pipe that extends through the center of the property from north to south. To alter or relocate this line would require construction of an entirely new section of piping, which would disrupt service to a large portion of town. This would be a significant project, with excessive costs.

Tim Nichols addressed fire safety. The proposed building shall comply with all life safety and building codes. Life safety and fire protection standards consider accessibility for fire apparatus and the proximate relationship of abutting buildings to determine the level of necessary fire protection. They will provide a maximum distance, from the point of the fire apparatus access roads to the building of 150 feet, to all portions of the facility and all portions of the exterior walls of the first story. They will provide a building envelope that is rated to provide fire protection based on the horizontal distance. The proposed building will have a substantially higher level of fire protection than all surrounding buildings and, therefore, provides and significantly lowers risk to public safety.

Regarding diminution of surrounding property values, Tim Nichols stated the current abandoned building is neglected. It is being accessed by unauthorized persons. The building is a fire hazard and a danger. The redevelopment would enhance the local area and provide an increase in real estate market values.

Tim Nichols stated the proposed use is a reasonable one, because the proposed mixed use development is entirely consistent with the intent of the M2 zone and Master Plan. It will be utilized to provide commercial space for his company. He stated the proposed use is reasonable considering the proximity of abutting properties. They substantially encroach upon his parcel. The distance and area of the encroachment of the structures is significantly greater than the encroachment of the proposed building. He stated the building will be a high performance/sustainable development

incorporating renewable energy technologies and will significantly reduce the demand for non-renewable and non-domestic energies.

Tim Nichols stated to establish mixed use development that satisfies the intent of the Town zoning ordinances and Master Plan requires a minimum footprint and net building area. Anything less than the proposed building area would render a mixed use project unviable.

Chairman Hawkins opened the public hearing.

Jim Wibel, Rivermoor Landing, Vice President of the Board, stated he was speaking generally favorably for the project. Mr. Nichols presented to the Rivermoor owners. He stated they had parking concerns. They constantly had people parking on their property, when Joyce's Kitchen was there. They did not think the encroachment was much of an issue for them. They discussed emergency access across the parking lot. There will probably not be flow through traffic, but they are willing to let it be open for emergency use or whenever Main Street is closed.

Bert Allen, 56 Smith Garrison Road, stated he was presently one of the deacons, at the church. His concern was the wall and excavation. When you excavate that much, there is concern about the church's footers. You are changing the elevation by about six feet. Cut granite has a tendency to move. Everything is creeping toward the river now. He feels attention is needed for drainage. There is high clay content. The back side of the church is a real concern. His other concern is parking for their parishioners. Parking keeps getting less and less. Anytime you put more people in a given space, you are making it hard for someone else. The elevation is going to make quite a bit of shade for light coming into the church. The church will be backed up against a big wall. The Fire Department says the applicant can build their structure and he hopes it is okay.

Chairman Hawkins stated the roof profile is not going to change, because they are starting from a lower point. Tim Nichols stated the building is lowered by six feet. The church will still have a much higher roofline. The new building's roofline will be at or lower than the existing roofline.

Richard Erickson, 169 Main Street, is church Treasurer. His concern was with the retaining wall, with water issues, and the change of terrain. This is fraught with uncertainty. The wall is close to the church. All that mass of soil needs to be excavated. What will stop that from collapsing and creating a void under the church? They were told they were using tie backs. They would extend toward the church and there is only about six feet of horizontal direction to retain a seven foot wall. He felt that could not possibly be engineered economically. He reiterated the stormwater runoff concerns and the loss of sunlight. That side of the church faces east. This is a proposed to be a much larger building. The building height might not be exceeded, but there is more building, and it is bulkier. That will affect the church, despite the roofline.

Marilyn Allen, Community Church, stated she was very much into beautification. She was concerned about parking. There was only going to be one parking space allowed at the proposed building per renter. Most people have more than one car. The second car would logically end up in the Rivermoor parking lot, where the church goes and people using the waterfront park now. She stated the church is not in good shape financially. She asked the applicant if he could commit in writing that the church will be okay when this excavation is done and that their insurance will cover any damage. The church is moving toward the river. She said the Board needs to be very careful, because of liability. Is there a way to delay and get the kinds of answers to her questions about liability and assuring the church that insurance coverage exists covering their concerns?

Action

Motion: Bob Daigle made a motion to close the public hearing

Second: Wayne Rosa

Vote: All in favor

Chairman Hawkins stated, if the Board approves the variance, that is only the beginning of the process. Many issues raised tonight, which are important issues, will be addressed more fully by the Planning Board, such as engineering of the wall, fire safety, access, and parking. Some of this is a bit outside of Zoning Board jurisdiction and more toward site plan review. He encouraged people to attend the Planning Board meetings for this project.

Chairman Hawkins proposed to approve the variance and adopt as their findings the evidence presented verbally and in writing from the applicant and Fire Chief and Pastor of the Newmarket Community Church and having consideration of all the public comments, he suggested the following:

In the event that, during the Planning Board process there is a change that causes the design to impede further into the setback than it currently does or if there is an alteration of the plan where it falls out of compliance with the Life Safety Code, that is be brought back here for further review.

Action

Motion: Bob Daigle made a motion stating that we grant a variance to Section 3.04 Setbacks in the Newmarket Zoning Ordinance that the evidence presented demonstrates the need for a variance, that the Criteria 1 is proved because it meets the intent of M2 criteria; 2 is met, because it meets the intent of the M2 Zoning District; the variance does substantial justice, Criteria 3, because it eliminates an abandoned and deteriorating building, the variance is granted, because of Criteria 3, value of surrounding properties would not be diminished. I believe that to be true, because the existing building is in a serious state of disrepair and a new building, especially a LEED certified building would be a nice start over there. Unnecessary hardship is proved, in my opinion, because there is an easement that runs through the middle of the parcel limiting where the building can be sited, the easement is based on the previous plan and limits access. That building can't be moved any closer to the water, the lot is an irregular shape and relocating the force main through the area would be cost prohibitive. I believe the proposed use is definitely a reasonable one and, as other evidence, I'd like to offer the information provided in the supplement and I'd also like to include the conditions that Chris mentioned before (which are as follows as stated by Chairman Chris Hawkins: Approve the variance and adopt as our findings the evidence that has been presented both in writing and verbally from the applicant and the Fire Chief and from the Pastor of the Newmarket Community Church and having consideration of all the public comments, I am going to suggest some conditions that, in the event during the Planning Board process there is a change that causes the design to impede further into the setback than it currently does or if there is an alteration of the plan such that it falls out of compliance with the Life Safety Code, that it be brought back here for further review.)

Second: Bill Barr

Vote: All in favor

Agenda Item #4 – New/Old Business

Chairman Hawkins encouraged people listening to the meeting to apply to be a Zoning Board member. The Board is in need of Alternates.

Agenda Item #5 - Adjourn

Action

Motion: Bob Daigle made a motion to adjourn at 8:03 p.m.

Second: Wayne Rosa

Vote: All in favor