

# ZBA Minutes 10/15/12

## NEWMARKET ZONING BOARD OF ADJUSTMENT OCTOBER 15, 2012 MINUTES

Present: Chris Hawkins (Chairman), Wayne Rosa (Vice Chairman), Bob Daigle, Gerry O'Connell, Diane Hardy (Zoning Administrator),

Absent: Bill Barr (excused)

Agenda Item #1 – Pledge of Allegiance

Agenda Item #2 – Review & approval of minutes: 07/09/12, 09/17/12

07/09/12

Action

Motion: Bob Daigle made a motion to accept the minutes

Second: Wayne Rosa

Vote: All in favor

09/17/12

Action

Motion: Bob Daigle made a motion to accept the minutes

Second: Wayne Rosa

Vote: All in favor

Agenda Item #3 – Regular Business

Ordinance. The applicant requests a Variance to permit side setback encroachment along Rivermoor Landing property boundaries, abutting the 13 Water Street parcel to the west and north. The lot is located at 13 Water Street, Tax Map U3, Lot 4, M2 Zone.

Gerry O'Connell recused himself due to a conflict.

Chairman Hawkins explained there were only three Board members present. He gave Mr. Nichols the option of waiting until more members were able to be present, as he would need three votes in favor of his application for it to pass. Tim Nichols stated he would go forward this evening.

Tim Nichols, Acadia Engineers & Constructors, presented the application. He brought a rendering showing the proposed buildings and a site plan. He went over the history of the applications before the Zoning Board. On September 8, 2011, they requested an area variance for side setback on the east and west property boundaries for a multi-story building. The variance was approved. The variance was along the Rivermoor property and the church property. On July 9, 2012, they requested a change to the area variance to allow a smaller building footprint, in response to abutters' and community concerns. They eliminated the setback encroachment on the church and extended the boundary along the Rivermoor property by about 20 feet. They are now requesting a new setback variance based on a new set of plans for the restoration of the historic building and the construction of a new, independent residential building.

Some of the recent developments that influenced the changes were that they had the existing blacksmith shop reviewed by a historian in July and the building was determined to be eligible for the National Park Service Register of Historic Places. Therefore, the property is eligible for tax relief and credits if the existing building is restored according to the Secretary of the Interior Standards for historic properties.

They also discovered the large tree at the front of the property is an American Elm. After some research, they found this is one of the largest that exist. It is an important historic treasure. They believe the tree is about 160 years old. It is eligible for the National Elm Tree Honor Roll. If they restore the building in its current footprint, they can save that tree.

Due to restrictions on historic properties, the original building must be a stand-alone structure. Therefore, a new structure has to be sited. It could be behind the existing building, encroaching on the Community Church or it can be north of the building next to the existing parking area. They have developed a new site layout that sites the building northward along the Rivermoor Landing parking garage. This was an economically workable solution that provides the least impact on abutters and the greatest benefit to the abutters. They were able to reduce the gross area of the development, based upon tax credits that were received on restoration of the existing building. They believe this provides the best balance for the site.

For the first criterion, he stated the variance involves a setback to a privately owned parking garage. The building will be less than the permitted height in the Zoning Ordinance. There is a minimum building height in the M2 Zone of 24 feet. The variance will allow the building to move back further from the Lamprey River. Redevelopment of the abandoned property will revitalize the downtown community and enhance the publicly accessible waterfront area. It will provide commercial office and residential space to the waterfront to support local businesses. Restoration of the F. E. Lang Blacksmith shop will preserve an important piece of Newmarket's history.

For the second criterion, he stated the Zoning Ordinance for the M2 district was established to protect the safety and welfare of the public and protect property values of abutting land owners. The proposed mixed use development is consistent with the intent of the M2 zoning regulations and the Newmarket Master Plan for development of the urban downtown area. The proposed mixed use development promotes the use of the Riverwalk, provides affordable usable space for small, professional businesses, and provides affordable residential units for professionals and adults. The restored historical building and the new building will comply with modern life safety code standards and will have active fire suppression systems. The proposed building does not encroach on the abutting parking garage structure by more than ten feet. The height of the proposed building is twenty feet below the maximum permitted height in the M2 zone.

For criterion three, the current zoning setback requirements for the M1 and M2 districts are not entirely consistent with

the existing urban landscape and historical development of downtown Newmarket. The current plan provides the most workable solution for redevelopment of a uniquely constrained property. It considers issues raised by the Town, abutters, and citizens. Without the variance, the proposed restoration and development project is not economically viable for the applicant.

For criterion four, he stated, if the variance was granted, the value of the surrounding properties would not be diminished. The current abandoned building is neglected, structurally unsound and poses a fire hazard. The property remains unmaintained. The restoration of the historical blacksmith building to National Park Service Standards will preserve a unique and valuable asset. Consistent with the majority of urban properties in Newmarket, the abutting properties, the church and Rivermoor, do not conform to current zoning setback requirements and they encroach upon the subject parcel. The proposed redevelopment of the site will enhance the local area and provide an increase in real estate market values for residential, commercial and retail properties. The improved community access and the mixed use functions will attract citizens that support local businesses and enhance the vibrancy of the community. The developed property will be a significant subject of interest, with historic restoration, renewable energies, and energy conservation. It will represent a unique example of responsible and sustainable urban development.

For criterion five, he stated owing to special conditions of the property that distinguish it from most of the properties in the area, denial of the variance will result in unnecessary hardship because no fair and substantial relationship exists between the general purpose of the ordinance, provision and specific application of that requirement. The property is distinguished by several special conditions that restrain redevelopment of the site, thereby resulting in unnecessary hardship. The Town of Newmarket maintains a deeded easement established in 2008 along the eastern property boundary. The area of the easement is 3162 sq ft, which represents 16% of the full parcel area. This easement reduces the buildable portion of the parcel and constrains building and infrastructure development along the entire eastern portion of the parcel. The Town easement was designed and constructed based upon a previously planned redevelopment of the property consisting of a seven unit, three story residential condominium building, for which the Town granted a Use and Area variance. The layout of the easement and Riverwalk infrastructure restricts the use of the parcel of any alternate design of the site. Constructing a new building to the west of the existing building is not practical given the area constraints, topography, and spatial relationship to the Newmarket Community Church. As vetted in previous redevelopment plans for the site, constructing a building in this location would require a setback variance that substantially encroaches upon the historic church building. The configuration of the parcel is non-rectangular, L-shaped, resulting in a peculiar site that is inherently restrictive for the siting of a mixed use building that complies with all setback distances, emergency apparatus access requirements, provides sufficient vehicular access and parking capacity and provides adequate pedestrian and bicycle accessibility for the community to the Riverwalk easement. Without a setback variance, the northern section of the parcel could not practically accommodate a commercial building, vehicular access, and provide bicycle and pedestrian access.

The proposed mixed-use development will be utilized to provide commercial space for the applicant's engineering firm (AEC). As a small growing business, AEC has been searching for a parcel in the Seacoast region to develop a building that meets current and future needs. The building will provide an example of high-performance building design and renewable energy technologies. The proposed use is reasonable considering the proximity of the abutting properties. That is, the abutting properties to the north and west (Rivermoor parking garage) and immediately to the west (Community Church) substantially encroach upon the parcel. The majority of properties in the M1 and M2 districts do not substantially comply with current setback requirements. As a high-performance/sustainable development that incorporates renewable energy technologies and energy efficient building construction methods the proposed facility will significantly reduce the demand for non-renewable and non-domestic energies. The development will serve as a beacon for energy efficient, high-performance commercial mixed use developments of urban areas in the state of NH. Restoration of a historically significant building in accordance with NPS Standards is consistent with Newmarket's Master Plan as it related to historic and cultural preservation.

He stated, presuming the Newmarket ZBA finds that the justification for the variance requested and provided herein is not established by the criteria defined in Subparagraph A, they provide the following justification to establish that the property "cannot be reasonably used in strict conformance with the ordinance" pursuant to RSA 674:33. To establish a mixed-use development that satisfies the intent of the Town of Newmarket Zoning Ordinance's M2 district and the Town Master Plan, it requires a minimum footprint and net building area. Anything less than the proposed building area would render a mixed-use development project economically unviable. Considering the physical constraints of the parcel as defined herein, a setback or height variance is required when considering the necessary residential and commercial space for a mixed use development. The building will occupy 16% of the existing undeveloped portion of the parcel, which is far less than all abutting and the majority of other M2 zoned developments. Additionally, the proposed building roofline is 20 feet below the maximum height allowed in the M2 district.

Chairman Hawkins opened the public hearing.

Rob Phillips, President of the Rivermoor Landing Association, asked if a site plan was going to be presented. They appreciated Mr. Nichols work on this project. He stated they had taken no exception to the old plan. He was glad the new plan did not affect the church as much as the old one. He said the new plan, however, affects Rivermoor like the old one affected the church and they have some issues with it. The problem is the building presents problems for the use of the parking garage. They will no longer have the light, egress, and public visibility they now have. Women using the garage have expressed concern about safety. The height impacts view sheds from the top of the garage. He stated certain things were needed on the Rivermoor property that would mitigate problems. He believes the project is very good, it just presents some problems with property values for them and he felt that taking away the view shed was not in the public interest.

Jim Wibel, Vice President of the Rivermoor Landing Association, stated Mr. Nichols has had a good relationship with them and has been very forthright. He stated the footprints of the buildings precede the automobile and trucks. There are more people with the mill redevelopment. They are concerned about pedestrian and vehicular traffic around the Rivermoor building. He understood the town houses would be as close as two feet to the property line. There are only two open vistas to the river. One is by the library and the other is over the parking garage. People do come onto the upper level and look at the river. That will be gone. There will be an adverse effect on their property values at Rivermoor Landing.

Leo "Skip" Manseau represented the Community Church. He spoke about the previous application. This new application is a better situation for the church. It does impact the Rivermoor parking garage. He stated the river is supposed to be enjoyed at the Riverwalk. It does go all along the front of the Acadia/Serbagi property. This townhouse certainly enhances the view if you were in a boat on the river. It is better looking than a parking garage.

Larry Pickering, Ash Swamp Road, stated you used to walk along downtown and see the river. Now there is a parking garage there. The proposal from Acadia is using up all available land on their lot. They are paying taxes on it; they should be able to use it. He cannot believe someone would be willing to spend such an amount of money rehabbing the building. He felt this would be an asset to the tax base.

Gerry O'Connell, 26 Grant Road, the agent for the seller of the property, stated the property has been listed for almost three years. This is a good plan. Something needs to happen there. The property is an eyesore and they need a buyer for it. He said this plan looked really good.

Mark (unable to hear on DVD), 303 Ash Swamp Road, stated he loved to walk at Heron Point. It gets more beautiful all the time. He loved the old paintings of town. If you look across from Heron Point this will be nothing but an amazing asset. This will turn our town into more of a gem. He will see a beautiful building and not see the parking garage. He knows it will be darker and the view as they get out of their cars won't be as nice, but they can get out of their cars and walk onto Heron Point.

There were no further comments and Chairman Hawkins closed the public hearing.

Wayne Rosa asked about lighting in the parking garage. He asked if Mr. Nichols could light the garage. Mr. Nichols stated he plans to light the area outside the building. There are lampposts in front of the building and they will have pac units at the rear. The pac lights will help provide the security lighting. Wayne Rosa said he was more concerned about the security of the parking lot than the view. If Mr. Nichols could address that, it would satisfy him. Mr. Nichols stated, if the proposed building is shifted further away from the parking garage, more light will be restricted. There is artificial lighting inside the garage now at about three times the foot candles that the standards recommend. Wayne Rosa stated,

as far as the view from Main Street, he agreed with what he heard tonight, as far as blocking. He did not see it as a problem. He goes through downtown many, many times and unless you actually walk over to the edge of the parking garage, this does not inhibit the view at all. The view from the river would be enhanced by this building.

Bob Daigle stated, regarding the view, he remembers when the Town Hall was there and restricted the site even more. That area was all built up. Mr. Nichols stated the best view of the river is from the Riverwalk. Everything they have tried to do is to try to improve pedestrian and bicycle access and give people more of a reason to come down to the Riverwalk. It is utilized by some, but could be utilized much more.

Chairman Hawkins asked if there was still an opportunity for a flow of traffic between the proposed building and Rivermoor Landing. Mr. Nichols stated that was correct. Chairman Hawkins asked how wide it was. Mr. Nichols stated it was 20 feet. He indicated it on the plan. They are eliminating four parking spaces that are there now. They will re-vegetate that and maintain emergency and service vehicle access through there. He met with Rick Malasky when they first revised the plan and he had no issues with the concept.

Chairman Hawkins stated, in terms of what is unique about this property, it is really the easement. There are a lot of properties that are tight with the building occupying substantially all of their lots. He stated that Mr. Nichols said several times that there are few buildings downtown that comply with the setbacks, because they existed long before setbacks were established. What makes this property unique is the easement. In his view, this is what satisfies the criterion.

Bob Daigle stated the historic redevelopment of the existing blacksmith shop weighs heavily on his thought process. It is a big plus in his mind. Chairman Hawkins stated the way the tax relief works makes that possible.

Wayne Rosa asked if the easement was being changed at all. Mr. Nichols stated it was not being changed. It will remain a 20 foot right of way. Wayne Rosa asked if the building will set on the easement. Mr. Nichols stated it was within a foot or two.

Diane Hardy stated the footprint of the new building is shown as about 2700 sq. ft. She asked what the dimensions were for the units. Mr. Nichols stated they were roughly 32 feet by 20 feet, about 700 sq. ft. per unit. Diane Hardy asked how many parking spaces there would be per unit. Mr. Nichols stated there would be one per unit. Diane Hardy asked, if they eliminated the lower floor, would that encroach upon the view from the upper level or would it end up about the same. There are two and a half stories proposed. Mr. Nichols stated they would go from 30 or 32 feet to about 20 feet. Diane Hardy stated there was a concept where development rights can be transferred from one lot to another lot. In this case, because of the existing zoning, you have view rights associated with the difference between the 50 foot maximum height allowance and what the actual dimension is. She asked if he had broached the idea of doing some kind of transfer of development rights to protect the view rights and, in return for that, Mr. Nichols would receive some parking within the Rivermoor parking structure. The addition would not have to be two and a half stories, perhaps they could get away with having no parking on the bottom floor. She wanted to throw that option onto the table. She has had discussion with the Rivermoor people in the past about the concept of building on the development rights or air rights over the parking garage, as part of the redevelopment of downtown. Mr. Nichols stated there is obvious value to having a parking garage on the bottom floor of the structure. The plan would have to work for them financially. He felt they needed to have that parking underneath.

Chairman Hawkins stated a lot of the discussion has centered on the construction of the new building being necessary to make the overall project economically viable. The Board has not seen any numbers demonstrating that, but that by itself is not necessary. Although the Board has not seen actual proof of that, it is very logical just understanding the kinds of costs that are involved in a restoration of the existing building to meet modern code. What is important to him is they do have a restriction on this property with the public easement that makes it different and unique relative to other properties in the area. The Board could quibble about the design, but this is not a design review board. It is consistent to the overall character of that area. On that basis, the reasonableness of the proposed use is satisfied. It sounds like there is about 10 or 12 feet that will be over the top of the parking garage. He appreciates the arguments that have been made by the Rivermoor tenants. If this building was in between the Rivermoor Landing building itself and the river, we would be having a different discussion. Mr. Nichols clearly has requirements he has to satisfy.

Bob Daigle asked about the market value of the townhouses. Mr. Nichols stated these townhouses would have to be in the mid four hundreds. It is very upper end of the current Newmarket market. There are a lot of benefits. Everything will be geothermal and there will be no heating or air conditioning costs, just an electric bill. There will be green roofs. The flat

section will be vegetated. He stated they are actually restricted, because it is on the same property as the Lang Blacksmith shop, on what they can do with that abutting building. They cannot use vinyl siding, it cannot mimic the original structure and make it look like it is part of the original site. They want them to take characteristics of the original building and incorporate those with a modern look. Chairman Hawkins stated that would make more economic sense. Mr. Nichols stated they think there is an attraction in being on a property with a restored historic building. They feel the whole waterfront development will justify those higher prices and make it viable. As far as construction costs, the renovation of the existing building will be higher in square footage. There are significant constraints.

Wayne Rosa asked if the elm tree was going to be removed in the previous design. Mr. Nichols stated they would have had to remove the tree. Any redevelopment of the existing building would have involved the removal of the tree. They have photos of the tree as a sapling growing in the same spot dated around 1860.

Wayne Rosa stated he agreed with Chairman Hawkins that the easement is the determining factor. It is a true hardship. Chairman Hawkins stated that was important to establish, not just that the property is unique relative to other properties in the area. A lot of properties in the area are constrained by very small lots. It is important to establish what is unique about this property and that is the constraint by the public easement. Diane Hardy stated the easement is providing a public benefit.

Diane Hardy stated all of the abutters were notified and the hearing was properly noticed.

#### Action

Motion: Wayne Rosa made a motion to approve based on the application and all of the evidence heard tonight

Second: Bob Daigle

Vote: All in favor

#### Agenda Item #4 – New/Old Business

Chairman Hawkins mentioned a seminar on Saturday October 27 put on by LGC for Zoning Board basics.

Diane Hardy introduced Steve Fornier, the new Town Administrator.

#### Agenda Item – Adjourn

#### Action

Motion: Bob Daigle made a motion to adjourn

Second: Wayne Rosa

Vote: All in favor

