

ZBA Minutes 02/14/12

NEWMARKET ZONING BOARD OF ADJUSTMENT MEETING FEBRUARY 14, 2012 MINUTES

Present: Wayne Rosa (Vice Chairman), Chris Hawkins (Chairman), Diane Hardy (Zoning Administrator), Bob Daigle, Ea Ksander, Bill Barr

Absent: Gerry O'Connell (excused)

Called to order: 6:11 p.m.

Adjourned: 6:49 p.m.

Agenda Item #1 – Pledge of Allegiance

Agenda Item #2 – Regular Business

170 Main Street Realty Trust/Eva S. Brown/Matthew & Barbara Carano – Continuation of a Variance reference Section 1.05(B)(1)(a) and a Special Exception reference Section 1.05(B)(1)(a-f), of the Newmarket Zoning Ordinance. The applicant requests the Variance and Special Exception to permit the installation of a commercial hood vent fan on the outside wall of their building facing the abutting Town property. The existing side setback for the M2 Zone is ten feet. The Variance is required, as the addition of the vent fan will extend beyond the footprint of the existing building and will end up extending 1-2 feet over the lot line. The Special Exception is necessary to allow this horizontal expansion. The lot is located at 170 Main Street, Tax Map U3, Lot 159, M2 Zone.

Chairman Hawkins stated the meeting is a continuation of a meeting on February 6, 2012. He asked the applicant to step to the microphone and present whatever additional information he wished to present. He stated they had received a letter from the Advisory Heritage Advisory Committee generally supportive of the application and a letter from a resident, not an abutter, Richard Shelton opposing the application.

Matthew Carano gave the Board some packets of information. He read his prepared responses.

To summarize Criterion 1, he stated it is common in the downtown area to see commercial and residential influences merge. While the vent fan will be in plain view, other establishments have viewable ventilation systems. The fan will be viewable from Route 152 and briefly from 108. The largest commercial influence on the downtown is the mills. The mills are an example of the stark, utilitarian structure of industry we have come to embrace. It blends with the character of the downtown. They believe the exterior of their building will blend over time with the addition of the fan. The Town Council did not object to its installation. It is in the public interest to have a stable business there.

To summarize Criterion 2, he stated the fan would not cause overcrowding of structures or land, because it abuts a Town park. It will be ten feet off the ground causing no interference with the use or users of the park. As far as the sound, the NCA 14FA and NCA 10FA are rated at 58 and 65 DBA. 60 dB is roughly the volume of conversational speech and 70dB is roughly the volume of street traffic. The sound level dissipates quickly.

To summarize Criterion 3, he stated granting the variance would allow proper ventilation to be installed. Without proper ventilation, they would not be able to open a restaurant in that space for fire safety reasons. There are only two locations to install the fan, the southwest wall and the roof. Installing the fan on the roof is economically impossible for them.

To summarize Criterion 4, he stated it is common to see commercial and residential influences mix. He met with commercial appraiser Brian White, who provided a written opinion. He felt it would not diminish the property values in the

area. Mr. Carano stated he also met with Tax Assessor John McSorley, who also provided a written opinion. Mr. McSorley stated he was told the fan would be the smallest one possible for this type of application. Any value impact would be difficult to estimate, but since this is a necessary and typical installation for such a business, he would estimate that an aesthetic loss in value would be minimal. Mr. Carano stated they could not put any plantings in front of the fan for fire code reasons, but could paint it.

To summarize Criterion 5A, Mr. Carano stated, without a setback variance, it would be impossible to add anything to the building, as it is located about one foot from the property line. The proposed use is reasonable, because a restaurant use is a normal use for the property. A functioning kitchen was located there in the past. At the time, they did not need commercial venting to meet fire codes. Unnecessary hardships exist, because the building is one foot from the property line, the rear abuts a granite ledge, venting through the roof is not economically feasible, and proper venting is required.

Bob Daigle asked if he got an estimate to put the duct work to the roof. Mr. Carano stated it would be \$16,000.

Vice Chairman Rosa stated he would like to go over Brian White's appraisal. He did not have a chance to read it. They took a few minutes to read it.

Ed Wojnowski, Town Administrator, spoke about the easement. He went over the discussion between Mr. Carano and the Town Council. The Town Council asked the Caranos to provide them with draft language for an easement. This was sent to the Town's attorney, so they can draft into it language that covers what happens if they cease to operate the restaurant or sold or rented to someone else, the owner or operator would have to come back to the Town Council in order to be granted a new easement to continue the restaurant. The Town Council is in full favor of the fan installation.

Vice Chairman Rosa stated typically a variance goes with the land, he asked if you could make it for the owner or operator as well. Ed Wojnowski stated that is what the Town Council wants, for any new proprietor to come back before them. He stated, if there are ever issues with the fan, the Town Council can always ask the Caranos to come back in to discuss them.

Bill Barr asked if the Town Council had any discussion of what they thought the impact on the Pocket Park would be. Ed Wojnowski stated they talked about it. They asked the Caranos to meet with the kids of Linked Together and have a conversation with them. The Council felt the amount of noise and impact to the park would not be very obtrusive and felt it was a reasonable accommodation to grant the easement.

Chairman Hawkins opened the public hearing.

Linda Edger, Cushing Road, stated she knows Matthew Carano and knows him to be very thorough and he does things the right way. She felt very confident having that shop there would be good.

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

Action

Motion: Bob Daigle made a motion to grant the variance for the evidence presented in the updated packet of information

Second: Wayne Rosa

Bob Daigle stated he felt the fan should be high, because he thought it was going to be louder. Looking at the "Photo Shop" photos, he is not seeing it as a big problem now. He asked about conditions. He stated the conditions of the easement are sufficient. Bill Barr agreed.

Bob Daigle stated his concern was for people using the Pocket Park. If the information is accurate, it will have minimal impact.

Chairman Hawkins stated there are three or four conditions he felt were reasonable. He would like to see the fan painted. He would like to see this removed and the wall restored if the restaurant use was discontinued. He felt the fan should be as high as possible, while being compliant with code. He did not want it to be blowing on anyone. The code says it has to be at least 10 feet off the ground.

The Board discussed a paint color for the fan to blend more with the stone wall of the building. Mr. Carano stated they could trust his aesthetic preference. He did not want to make this ugly. Chairman Hawkins stated the Board wanted the same thing, but they had to be specific. The Board decided that color 15 charcoal, color 16 steel, and color 17 pewter from the Flame Control Coatings, LLC color chart provided by Mr. Carano were acceptable choices for the fan.

Action

Motion: Bob Daigle made a motion to approve the variance for the evidence presented in the updated packet of information

Second: Wayne Rosa

Motion: Bob Daigle amended his motion to add these conditions:

1. The fan be painted either Color 15, 16, or 17, as on the color chart provided;
2. If the restaurant use is not continued, the vent will be removed and the wall restored to the original condition as near as possible consistent with the information was have in the record from New Hampshire Stone Walls;
3. This is subject to the easement language being acceptable to and approved by the Town Council; and
4. The vent will comply with all applicable codes in all other respects.

Second: Wayne Rosa

Vote: (on the amendment): All in favor

Vote: Chris Hawkins opposed

All others in favor

The Board discussed the Special Exception. Chairman Hawkins asked if Mr. Carano had any additional information for the Board that he had not already shared. Mr. Carano stated he did not think so.

The Board discussed the requirements for the Special Exception. They felt the expansion was minimal, just a few square feet, and not an expansion of the physical footprint of the building. Since it was 10' high, there would not be an impact on public health or welfare.

Action

Motion: Bill Barr made a motion to approve the Special Exception reference Section 1.05(B)(1)(a-f) of the Newmarket Zoning Ordinance for the purpose of the installation of a vent fan based on the same as submitted for the previously approved variance

Second: Wayne Rosa

Vote: All in favor

Agenda Item #3 – Other Business

None.

Agenda Item #4 – Adjourn

Action

Motion: Bill Barr made a motion to adjourn at 6:49 p.m.

Second: Ea Ksander

Vote: All in favor