

# ZBA Minutes 07/15/13

## NEWMARKET ZONING BOARD OF ADJUSTMENT MEETING

JULY 15, 2013

### MINUTES

Present: Chris Hawkins (Chairman), Wayne Rosa (Vice Chairman), Diane Hardy (Zoning Administrator), Elaine Winn, Richard Shelton (Alternate), Brett Johnson (Alternate)

Absent: Bill Barr (excused)

Called to order: 7:01 p.m.

Adjourned: 7:26 p.m.

Agenda Item #1 – Pledge of Allegiance

Chairman Hawkins appointed Richard Shelton to fill in for Bill Barr.

Agenda Item #2 – Review & approval of minutes: 06/27/13

#### Action

Motion: Bob Daigle made a motion to accept minutes as transmitted

Second: Richard Shelton

Vote: All in favor

Elaine Winn abstained due to absence

Agenda Item #3 – Regular Business

Mark Piekarski and Lennel Stroud - Public hearing for a Variance regarding property at 48 Smith Garrison Road, Newmarket, NH, Tax Map R2, Lot 51, R1 Zone, reference Section 3.04(B), of the Newmarket Zoning Ordinance to permit the construction of a 14' x 24' shed ten feet from the property line where a twenty five foot setback is required.

Diane Hardy stated all abutters had been notified.

Mark Piekarski referred back to his written answers to the criteria. He stated the reason for the request for a variance is the proposed shed will be placed in the most aesthetically pleasing location on the property. The previous owner had a box trailer on wheels on this pad next to the garage. The proposed location falls over the setback line. He would like to have the shed constructed to match the character of his home and neighboring structures. It is isolated in that location.

Chairman Hawkins stated Mr. Piekarski had stated, in his application, there were other areas where he could place a shed on the property without getting into the setback. He asked Mr. Piekarski what conditions existed that make it reasonably necessary to have the shed only in the proposed location. Mr. Piekarski stated, if he locates the shed in another area, he gets into juggling with the leachfield and septic system locations. He indicated on a plan where those were. He stated those areas were fairly flat, as they were graded that way when they were installed. He showed on a septic plan how the property is hilly and the proposed site next to the garage is flat with crushed stone and a pad put in by the previous owner. This is the least obtrusive place to install the shed. If he gets into the other flat area, he is into his leachfield and septic. The proposed location is tucked away on the property. He has spoken to the nearest property owner, John Ahlgren, and he did not have an issue. He was not present at the meeting. He stated this is a heavily wooded area.

Richard Shelton had taken some photos of the site and showed them to the Board. They were placed in the file, as part of the record. He stated he knew the property, as he used to go fishing with the previous owner. To the right, it is pretty hilly, with rolling lawn and trees. The applicant is also trying to skirt the septic system. Below the house is pretty soft and wet when it rains. The shed would be in the river setback there. The only logical place is where the applicant is proposing it. He did not feel there was another place for the shed on the property.

Chairman Hawkins stated conditions of the property that affect the shed location were that the area is hilly and the septic system location is a problem. He stated there is also a Shoreline Protection Area setback involved and another location for the shed is too wet and the ground too soft.

Wayne Rosa stated, from the site plan, the septic system side of the house cannot be used. This area extends all the way to the front of the house. He agreed the proposed location was the only place to put it.

Chairman Hawkins stated this property is isolated from its neighbors.

#### Action

Motion: Richard Shelton made a motion that the proximity of the shed will not be visible from Smith Garrison Road and will not affect the character of the neighborhood. The location of the shed within the 25 foot setback within ten feet from the property line will not affect the neighboring property, as the adjacent area is well wooded. As this pristine lot of 2.5 plus acres on the Lamprey River, with the landscape of rolling lawns and trees, would cause the applicant undue hardship to attempt to locate the shed elsewhere on the property, I will make a motion to grant the applicant a variance from Section 3.04(B) to place the shed within the 25 foot setback to within 10 feet of the property line. The property is located at 48 Smith Garrison Road, Tax Map R2, lot 51, in the R1 Zone.

Second: Wayne Rosa

Bob Daigle suggested they add language that the alternative site is already occupied by the septic system. Richard Shelton stated they could add that in. Wayne Rosa seconded. (No formal motion was made or voted upon.)

Vote: All in favor

#### Second Reading of Amendments to Zoning Board of Adjustment Rules of Procedure.

Wayne Rosa asked, on page 2, number 3, if members and alternates had to reside in town. Diane Hardy stated they both did have to reside in town.

Wayne Rosa verified, on page 6, item C, if members and alternates of the Board were both supposed to be included in that item. Diane Hardy stated they both were supposed to be included.

Wayne Rosa asked if, on page 7, number 6, it would be clearer to state the number of days involved. Diane Hardy said the number of days is stated in number 7.

Wayne Rosa stated, on page 2, number 2, it said, "Once the Board moves into deliberations, Alternates shall remove themselves from the table and no longer participate with the Board." Diane Hardy stated that is recommended. It is not in the law. The Office of Energy and Planning provides guidance to Zoning Boards and, in their most recent handbook, they recommend, at the deliberation stage, if the board member is not voting, they should move to the floor. The reason for that is so the public is not confused as to whether the person is voting. Wayne Rosa stated he did not have a problem with it, but the Board has to be careful. To have a good, participating Alternate, the Alternate has to be able to participate or they will not attend meetings. However, when the applicant sits out there and sees five regular members and then two or three Alternates and the Alternates do not vote, but have influence, it made him conflicted on how to approach this issue. Bob Daigle stated the way he understood it was, if the Alternate is not replacing a regular member, he can take part in the discussion. When the Board sits down to make a decision, they should not have input at that point. Wayne Rosa stated the Board has not been doing that. Chairman Hawkins stated this should be at the Chair's discretion. If an Alternate is dominating the deliberations, that is not appropriate. He was concerned about these little "trip wires" being spelled out in the rules. He used the example where tonight Brett didn't physically move away from the table, but he did not say anything during deliberations. Chairman Hawkins stated he had no problem with that at all. Diane Hardy explained these are only recommendations. It is up to the Board what to include. Chairman Hawkins would rather that

this item state "Alternates shall refrain from participating in deliberations, once the public hearing is closed." He stated it is helpful to have an Alternate bring things out that other members may not have thought about, but when the public hearing is closed, it should be the voting members who participate at that point. Diane Hardy suggested that the item read, "Once the Board moves into deliberations, Alternates shall refrain from participation in discussions with the Board." Chairman Hawkins stated he would let her work out the phrasing, but he agreed with that concept. He would like the Board to take one last look at the revisions and vote on it in a couple of weeks at the next meeting.

#### Agenda Item #4 – Other Business

None.

#### Agenda Item #5 - Adjourn

##### Action

Motion: Bob Daigle made a motion to adjourn at 7:26 p.m.

Second: Elaine Winn

Vote: All in favor