

# ZBA Minutes 06/27/13

## NEWMARKET ZONING BOARD OF ADJUSTMENT MEETING JUNE 27, 2013 MINUTES

Present: Chris Hawkins (Chairman), Wayne Rosa (Vice Chairman), Diane Hardy (Planner), Bob Daigle, Richard Shelton (Alternate), Brett Johnson (Alternate)

Absent: Bill Barr, Elaine Winn (both excused)

Called to order: 7:04 p.m.

Adjourned: 7:43 p.m.

Agenda Item #1 – Pledge of Allegiance

Agenda Item #2 – Review & approval of minutes

### Action

Motion: Bob Daigle made a motion to accept the minutes as presented

Second: Wayne Rosa

Vote: Chairman Hawkins abstained due to absence

All others in favor

Agenda Item #3 – Regular Business

Chairman Hawkins appointed Alternates Richard Shelton and Brett Johnson to replace Bill Barr and Elaine Winn, who were absent. Both had looked at the application materials and felt prepared to move forward on the application.

Joseph & Elizabeth Valinski – Public hearing regarding property located at 32 Huckins Drive, Tax Map R5, Lot 107, R2 Zone, for Variances to permit the construction of a retaining wall in the front yard along the northerly boundary of the lot. Two variances are being requested. One concerns Section 5.03(C)(4) of the Zoning Ordinance, as the proposed construction will impact a 25 foot buffer around soils considered to be poorly drained soils or Hydric B wetland soils. The other pertains to Section 5.03(F), which allows such construction by a Special Use Permit, provided certain conditions are met. Because those conditions call for a mitigation plan for increasing wetlands buffers elsewhere on the site, and/or the perpetual protection of an area of off-site wetlands, conditions which cannot be met, the applicant is requesting a Variance from this section of the Zoning Ordinance as well.

Diane Hardy stated there was a typo in the notice. The first variance should be to Section 5.03(C)(4). All abutters were notified.

Adam Cullinane, owner of Adam's Edens, a creative landscaping company, represented the applicants. Part of area that would be disturbed for construction of the retaining wall is within a wetlands buffer. The ordinance calls for the area to be mitigated. The way the existing area is and with the size of the area, there is no room to do any mitigation elsewhere on the property.

He stated the property off the driveway slopes down to the wetland and it is a barely mobile space, like a cliff. If a car leaked, the oil could wash down into the wetlands. They wanted to put the retaining wall in to raise the side lawns, so it is a more usable space. It will look better and any possible contaminants that come off the driveway would be filtered through the drainage system of the wall and be filtered before it enters the wetland. It is almost mitigation in itself.

Chairman Hawkins stated they have read the submitted materials and he was familiar with the property. The rest of the Board had looked at the lot. He explained for the public's benefit, that this lot is tucked in a back corner of the circle on Huckins Drive. It is well below grade and slopes back from the road. The property is backed to the west by some significant swamp area. It is a small lot. There is a significant drop off almost immediately from the road into the drainage area to which Mr. Cullinane was referring.

Chairman Hawkins asked Mr. Cullinane to give people an idea of the size of the retaining wall. Mr. Cullinane stated it would be roughly 90 feet long. The highest point would be about 5 to 5½ feet. That would taper down to about a foot at the lowest points. They would fill behind that and try to raise the lawn.

Chairman Hawkins stated, because of the size of the lot and the way it is configured, there is no opportunity to compensate with any upland area. Mr. Cullinane stated that was correct. It is tucked into the corner. The way it is set up, there is no way to mitigate.

Chairman Hawkins stated the house immediately to the south is well above the Valinski's property, so the Valinski's have water draining down through their property. Mr. Cullinane stated that was correct and this was a unique situation.

Chairman Hawkins suggested the Board adopt the material that was submitted with the application and their own observations of the property and incorporating that as their findings regarding the five variance criteria.

Richard Shelton stated the applicant should read the criteria responses for the public.

Mr. Cullinane read his responses to the five criteria submitted with the application.

Chairman Hawkins asked what impact the proposed construction will have on the drainage through the culvert. Mr. Cullinane stated there would be no impact. If anything, it would potentially direct it more into the wetlands, but he did not think it would change anything at all.

Bob Daigle asked where the culvert comes from. Mr. Cullinane stated it was further up the street on the left side as you exit the neighborhood. It goes quite a distance, before it comes out on the other side. The water is coming from further up the neighborhood and running to the wetlands. Wayne Rosa asked if he was going to relieve that at all with this project.

Mr. Cullinane stated he spoke with Rick Malasky, Director of Public Works, and he said, after the construction was completed, his department would be able to come in and clean that all up. If that was draining the way it should have been, it probably would have kept the wetlands further back and they would not have been a factor with this project. It was causing the wetlands to be closer.

Diane Hardy stated there has been a lot of paving in the area and that has increased the runoff, feeding the wetland. She stated Rick Malasky has been to the site and did not have a problem with this project.

Mr. Cullinane continued reading his written responses to the five criteria. The following is a summary of those written responses.

To the first criterion he stated the proposed wall does not conflict with the explicit or implicit purpose of the ordinance and does not alter the essential character of the neighborhood, threaten public health, safety or welfare or otherwise injure public rights. The existing wetlands buffers are most likely manmade. Over the years, sediment built up in the culvert and caused drainage issues. The Conservation Commission had stated the sediment has probably built up further downhill, too, closer to the original wetland boundary and created a larger area of poorly drained soil further uphill than what was existed when the lot was developed.

To the second criterion he stated the wall will help maintain the wetlands by filtering potential hazardous (contaminants) materials from entering the wetlands via the driveway. It will help prevent further erosion of the existing hill into the wetlands.

To the third criterion he stated the benefit to the homeowner will be they have a more normal and usable front lawn similar to the other properties in the neighborhood. It will be more aesthetically pleasing and there will be positive results for the wetland.

To the fourth criterion he stated the wall will look better and increase property value. It will be visible to neighboring homes. From driving around the neighborhood, it will be much more aesthetically-pleasing than what is there now.

To the fifth criterion, he stated the size of the lot and location relative to the wetlands does not allow for proper mitigation. The existing slope and area is unusable, unmowable and not aesthetically pleasing. The wall will benefit the wetlands area. In a way, this wall is a form of mitigation in itself. It will improve the existing terrain that is currently playing a role in affecting the wetlands in a potentially negative fashion.

Chairman Hawkins stated he agreed with the findings of the Conservation Commission based on his own observations of the property.

Mr. Cullinane stated they would be about 17' within the 25' buffer.

Richard Shelton stated this was a very complete response. He stated, if the Conservation Commission is supporting it, he did not have a problem granting this.

Wayne Rosa read some of the letter of support from the Conservation Commission.

#### Action

Motion: Wayne Rosa made a motion that they approve the variance for Joseph and Elizabeth Valinski for property located at 32 Huckins Drive, Tax Map R5, Lot 107, R2 Zone, for Variances to permit the construction of a retaining wall in the front yard along the northerly boundary of the lot. Two variances are being requested. One concerns Section 5.03(C)(4) of the Zoning Ordinance, as the proposed construction will impact a 25 foot buffer around soils considered to be poorly drained soils or Hydric B wetland soils.

Second: Richard Shelton

Vote: All in favor

## Action

Motion: Richard Shelton made a motion, that (1) the existing retaining wall for many years has been located in the existing wetlands; (2) the proposed retaining wall, of which approximately 17-20 feet will be a continuation of that wall; is in the wetlands, and whereas, the wetlands of this lot at 32 Huckins Drive, is only .44 of an acre, with wetlands predominating the rear property; (3) this site is not conducive to replacing the impacted wetlands, as shown on the map on this property; (4) it is a statement of fact the improvements associated with the impacted wetland area, will have no negative effect to the area, and (5) the functional values of the improvements are much greater than the impacted wetland so any mitigation proposal will not be required. A motion is, thereby, made to grant a variance from Section 5.03(F).

Second: Wayne Rosa

Vote: All in favor

## Discussion &amp; First Reading of amendments to the Zoning Board of Adjustment Rules of Procedure

Diane Hardy stated she made one change in the amendment section on page 8 to what had originally been given to the Board. She felt it read a little bit better. She felt the rest was fine and was consistent.

Wayne Rosa asked about the section on decisions. He stated it said decisions would be made within fourteen days. Diane Hardy stated she thought that was a carry-over from the Rules of Decision currently being utilized by the Board. Chairman Hawkins stated they always tried to make decisions within a reasonable time frame. He did not want to lock the Board into a time frame. Diane Hardy stated there was nothing in the State statute giving you a particular time frame. The Board may want to allow more time than fourteen days. Chairman Hawkins stated they should have the ability to waive the fourteen days, if they need to under appropriate circumstances. Richard Shelton stated there may be times when legal counsel is needed that would take longer. Diane Hardy stated there is a waiver section in the proposed amendment and she read it. Chairman Hawkins stated the Board is always timely, because it is fair, but they do not want to act hastily, because that does not do anyone any good. They decided to change the time frame to read "within 30 days".

Changes were made to the order of the agenda.

Chairman Hawkins stated Diane Hardy would make the changes and this would be brought forward at the next scheduled meeting for a Second Reading and further action as the Board may deem appropriate.

## Agenda Item #4 – New/Old Business

Diane Hardy stated, at the May 20, 2013 meeting, there was a discussion of whether to rehear one of the special exception cases of William Pothier, 8 Bay Road, which was been denied. The 30-day appeal period has passed and the Board did not receive a formal appeal through the court. Mr. Pothier and his attorney met with the Building Official on Monday of this week to look at the existing building and try to determine the best way to modify the building to bring it into compliance. A number of different options were looked at and they are going back to look at the costs associated with those modifications. The Building Official did receive a letter from Mr. Pothier's attorney, Attorney Scott Hogan, requesting that the stop work order be lifted, so they could proceed with installing windows and stabilizing the structure. Attorney Hogan indicated any further work would be done in full compliance with the recent Zoning Board decision. They will come back to the Building Official with plans. The stop work order will be lifted on that basis.

## Agenda Item #5 – Adjourn

Action

Motion: Bob Daigle made a motion to adjourn at 7:43 p.m.

Second: Brett Johnson

Vote: All in favor