

ZBA Minutes 04/15/13

NEWMARKET ZONING BOARD OF ADJUSTMENT MEETING

APRIL 15, 2013
MINUTES

Present: Chris Hawkins (Chairman), Wayne Rosa (Vice Chairman), Bob Daigle, Elaine Winn, Richard Shelton (Alternate). Zoning Administrator, Diane Hardy, Zoning Administrator, was also present.

Absent: Bill Barr (excused)

Called to order: 7:02 p.m.

Adjourned: 7:15 p.m.

Agenda Item #1 – Pledge of Allegiance

Agenda Item #2 – Review & approval of minutes: 04/08/13

Chairman Hawkins stated that he wanted to acknowledge Gerry O'Connell, who had recently resigned from the Zoning Board, and thank him for his years on the Board. They are very grateful to him for his service, he did a terrific job.

Agenda Item #3 – Regular Business

Andrea and Sean Donaldson – Public hearing for a variance reference Section 3.04(B), of the Newmarket Zoning Ordinance. The applicant requests a variance to permit construction of a two car garage on the northwest side within the side setback. The garage will be located 10' from the property line, where 25' is required. The lot is located at 469 Wadleigh Falls Road, Tax Map R6, Lot 38A, R1 Zone.

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

Andrea Donaldson presented her application. They would like to build a two car attached garage. The garage will be too close to the property line, within the setbacks. They are seeking a variance to build within ten feet of the side property line. The property they would encroach on is a large portion of conservation land owned by the Town. They would not be close to any other structure or person's property. It would not decrease the property values at all.

Andrea Donaldson asked how the Board normally proceeded with an application. Chairman Hawkins stated the Board has read the submitted paperwork regarding her answers to the five criteria. He stated he had been out to look at the property and Richard Shelton took some photos. This is an opportunity for her to present evidence. He said she did not have to read her submission, but she may have additional information she would like to present.

Andrea Donaldson stated her property is unique, because the land next to it is owned by the Town. It also has some constraints that would prevent them from putting the garage anywhere else on the property. If it was closer to the street, it would be in the road setback, which is probably a lot less appealing. They have wetlands behind the house. They are outside of that setback area. They have satisfied those criteria, but they do not want to attempt to put the garage any further back from the house. They have an existing driveway. Moving the driveway to the other side of the house would put them close to the intersection of Ash Swamp Road and Route 152. She stated everyone knows that corner is particularly busy. Also on the other side of the house is their existing septic system. The positioning of the driveway is a landscaped area. It is not wooded or wet, it falls right at the end of the driveway, so it is a natural space to put a driveway.

Chairman Hawkins stated the house in the northwest part of the property, fairly close to the road. The area the Town owns is Tuttle Swamp, surrounding the property on two sides. Part of the property has hydric soils. They are constrained at the back by some areas that are considered wet that prevents them from moving the garage further back without encroaching upon the setback from those portions. Andrea Donaldson stated those soils are poorly drained. Chairman Hawkins stated the proposed site of the garage is on the west side, bordered by Tuttle Swamp. Andrea Donaldson stated that a portion of the Town property next to her house is conservation land, but she did not think it was part of Tuttle Swamp. It is very dry there.

Chairman Hawkins asked if they had experienced flooding. Andrea Donaldson stated they had during the Mother's Day Flood in 2006. Under ordinary circumstances, they do not experience flooding on the property.

Chairman Hawkins opened the public hearing.

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

Richard Shelton stated on Criterion 1, the public benefit will be well-served with the addition of a two car garage added to the tax base. On Criterion 2, it will not alter the essential character of the neighborhood and would not threaten the health, safety and welfare of others. On Criterion 4, this property is unique in its setting, because it is located just east of the junction of Ash Swamp Road and Wadleigh Falls Road, bordered by land of Russell and Carol Ross to the east and Town-owned conservation land to the west and south. No objection has been raised by the Town of Newmarket, therefore, it is a Statement of Fact that the value of surrounding properties would not be diminished. For the "unnecessary hardship" test, Part I, the Zoning Ordinance imposes some hardship on all properties by setting lot size, dimensions, and allowable uses. The R-1 zone minimum lot size is 2 acres and the applicant's is 1 acre. At one time, a mobile home was located on the property. The proposed use is reasonable and meets the purpose of the ordinance. The applicant has shown that the special conditions of land render the use for which the variance is being sought, as being reasonable. The proposed use would not alter the essential character of the neighborhood. When he goes back to Criterion 3, it will not alter the neighborhood, not affect adjacent properties, and a relief of the injustice has been met by granting a variance that meets the other four qualifications.

Action

Motion: Richard Shelton made a motion to approve the five variance criteria

Second: Bob Daigle

Chairman Hawkins stated, by looking the file, he could see abutters were notified. There were no inquiries or objections.

He stated there were unique constraints on the property, because of the hydric soils and there is no neighbor or likelihood of any neighbor ever being to the west. He agrees with everything Richard Shelton said.

Vote: All in favor

Action

Motion: Richard Shelton made the motion stating, by approving the five criteria to garage on the northwest side, approximately 15 feet within the 25 foot side variance is hereby granted. The lot is located at 469 Wadleigh Falls Road, Tax Map

Second: Bob Daigle

Vote: All in favor

Agenda Item #4 – Other Business

None.

Agenda Item #5 – Adjourn

Action

Motion: Bob Daigle made a motion to adjourn at 7:14 p.m.

Second: Elaine Winn

Vote: All in favor