

ZBA Minutes 01/28/13

NEWMARKET ZONING BOARD OF ADJUSTMENT MEETING JANUARY 28, 2013 MINUTES

Present: Chris Hawkins (Chairman), Wayne Rosa (Vice Chairman), Bob Daigle, Bill Barr, Diane Hardy, Zoning Administrator was also present.

Called to order: 7:17 p.m.

Adjourned: 8:01 p.m.

Agenda Item #1 – Pledge of Allegiance

Agenda Item #2 – Review and approval of minutes: 10/15/12

Action

Motion: Bob Daigle made a motion to accept the minutes

Second: Wayne Rosa

Vote: All in favor

Bill Barr abstained due to absence

Agenda Item #3 – Regular Business

Chairman Hawkins mentioned there is an opening for a full Zoning Board member.

William Pothier – Special Exceptions reference sections 1.05(B)(1) & (2) and Variances reference Sections 1.05(B)(1)(b) and 1.05(B)(2)(c), of the Newmarket Zoning Ordinance. The applicant requests the Special Exceptions and Variances to permit the expansion and raising of an accessory building, which is a non-conforming structure, five feet to prevent flooding from high tides and rising water levels. The lot is located at 8 Bay Road, Tax Map U2, Lot 356, R2 Zone.

Chairman Hawkins stated there are only four Zoning Board members at this time. In order for an applicant's request to be granted, they would need at least three affirmative votes. He explained that the applicant's chances of approval are better if there are five Board members rather than four. He stated the applicant's options were to go forward tonight with four members with the understanding that it is better statistically if there are five members, as three affirmative votes are necessary to grant the request, or the applicant can continue his application until the Town Council can appoint someone either for the purpose of sitting on this application or as a full term Board member.

Bill Pothier stated he would prefer to continue to a future time. He would like to have the additional Board member. He stated the contractor who assisted with the project was not able to make it to the meeting tonight. He would feel better prepared if he was with him. Chairman Hawkins stated the meeting would have to be continued to a date at least 30 days from now due to the availability of the current Board members. At best, it would be in early March. Bill Pothier stated he

would rather go forward tonight. He felt well enough prepared.

Chairman Hawkins explained the procedure the Board would follow for the meeting.

Bill Pothier showed an aerial photo of the property and surrounding area and explained what was being shown. Mr. Pothier stated, if you look at his building in relation to Bryant Rock, it is at a 45 degree angle. The view from units at Bryant Rock should not be an issue, as you would have to physically look through your window and turn your head 45 degrees in either direction to see that building. There is a fair amount of foliage around there. The building does not impede anyone's view. The structure has been raised about five feet. It is very difficult to see that building from any other structure. Even the building across the street on the corner of Bay Road and Lamprey Street is being blocked by trees.

Mr. Pothier gave a history of the property. He showed an older photo taken from Bryant Rock of his original building. He showed another photo taken at ground level of the original buildings.

Chairman Hawkins asked if there was a breezeway in between the two buildings. Mr. Pothier stated there was a breezeway in between, loosely connected. The water and power went from the small building to the big building. There was a small series of gangplanks that went between the two buildings, as well. There is a sluiceway that goes underneath from Lamprey Street, across Bay Road, under the building and empties into the Lamprey River. The area in between the two buildings was almost completely open, you could fall in if you were walking back there.

He showed another photo of the original boathouse and explained that it was about five feet lower than the barn. He then showed a photo taken in 2007 during the floods. He stated this was the second time that area had flooded since he owned the property. In the photo, the water had actually receded quite a bit from where it had been, as indicated by debris that had been washed up on shore. He said the water line had actually come up to about 2 feet inside the boathouse. He stated the blue house is on the same lot and it is a single-family residence with two stories and a full basement.

Mr. Pothier showed a photo of the sluiceway with the old boathouse. He stated it received damage during the floods and during the winter. He pointed out a support that butts right up to the boundary line of Bryant Rock. He said the structure was on 55 gallon drums. There is a 2½ foot diameter tree that holds up the front of it and then there are timbers that have been holding the building up for a hundred years or however long it has been there.

He showed a photo of the side of the old building, with tree trunks lying on the ground next to it from the flood. He pointed out that the barn is slightly higher than the boathouse. It is pretty much level with the street. He showed another side view photo showing a support of the barn. He stated there was not much holding it up. He stated he had to take that building down, because his insurance company required it.

He showed another photo of the old building above the sluiceway and then one of the sluiceway itself looking toward Bay Road. He stated it goes into an open canal.

He showed a photo of the new structure. He spent a great deal of money improving the sluiceway and raised the height of the building. You can literally walk up in there and your feet will stay dry, if maintenance is required. He stated he substantially improved the structures. They are up to code. The building is divided. He pointed out where. He did leave the breezeway isolated, keeping the spirit of the building permits for which he applied. It is a separate entity between the two buildings. He showed another view of the new building.

He stated what he has is clearly a nonconforming lot and nonconforming structures. They literally butt up to the boundary of Bryant Rock. He has owned the property for about ten years. The building has traditionally been used as a boathouse. They built and fixed boats in there. It was somewhat habitable. There was a full flush toilet in the big building and an outhouse in the small building. They evacuated right into the Lamprey River. There was electricity. When he purchased the property, he received two electric bills, one for 8 Bay Road and one for 2 Lamprey Street, which is the boathouse and barn.

He stated the historical use of the building was that people did stay in there. There were fixed bunk beds. The old

boathouse was a two story building with a large loft, nearly three stories. The new building is a two story building with no loft. Between the two buildings there were two stoves, two toilets, electricity and running water.

He stated he connected the two buildings the way he did for safety reasons. It was much safer, made more sense and was more economical. It maintained the structure of the sluiceway. He left the breezeway as a separate room between the building and the garage, so it did not add to the potential living space.

He did raise the building about five feet to get out of the floodplain. He connected the buildings for structural integrity.

He claimed the building had been used as a residence in the past. It had bunk beds, running water and electricity. The Zoning Ordinance does allow in-law apartments in the primary structure and the possibility of a home business. The blue house is about 945 sq. ft. per floor. There are two floors and a full basement, which is about 2800 feet. He believes the ordinances allow for a business up to 800 feet. Diane Hardy stated 800 sq. ft. is the maximum square footage for an accessory apartment. Mr. Pothier stated, if he had to go that route, he felt he could meet the criteria for an accessory apartment. Wayne Rosa stated the accessory apartment would have to be attached to the primary dwelling. Mr. Pothier stated the building was historically used as a boathouse and he felt it had been a residence of sorts. It has its own physical address with the electric company, though it is part of the property at 8 Bay Road. Chairman Hawkins asked if there was a separate tax bill for it. Mr. Pothier stated there is not, for some reason PSNH numbered it differently.

Mr. Pothier stated he received eleven letters of support from abutters regarding this property supporting the continued building and use of it. He stated he did not have the letters with him and they were from tenants at Bryant Rock and one is a neighbor, Patricia Gavin at 8A Bay Road, next door.

He stated it was prudent to raise the building and connect the structures. The sluiceway can be easily accessed now. He stated he has done a lot to keep in spirit with the Town and what they want to do. He has improved the waterway and installed the dock. He has cleaned up the property substantially.

He stated he proposes the use of the building as a residence and he felt it is a reasonable use. He did not believe he was going against anything. Diane Hardy explained there is a separate application involved for use as an accessory apartment, but this is not the subject of the meeting tonight. Chairman Hawkins stated this meeting was about horizontal and vertical expansion. Mr. Pothier stated the apartment will be addressed at another time. Diane Hardy stated he would have to get a Special Exception for the home business and the accessory apartment. She stated, as Mr. Rosa had pointed out, he would need a variance also, because the building is required to be attached to the primary dwelling.

Mr. Pothier stated he has been very transparent in his building permit application for tearing down the old structures and building the new structures. He stated the Building Official has been over there numerous times. Everything has been above board for this and he has support to continue the work from direct abutters. This is a substantial improvement to the neighborhood and it will increase the tax base. The building is far more valuable than what stood there before and, aesthetically, it is a very nice looking structure.

Wayne Rosa asked if he has an existing conditions plan and an as-built plan that he can show them. He asked if a surveyor had been hired to come in. Mr. Pothier stated he did not hire an independent surveyor, he strictly had a contractor that took the measurements of the previous building and built the new building within the footprint of the old building. The new building is slightly smaller than the old building dimensionally. The old building was 24½ feet wide, and, on some of the plot plans it shows 25 feet. The new building is 24 feet. The length is exactly the same to the inch. The new buildings are just filled in between them now.

Chairman Hawkins asked if the new building was in the same footprint as the old one. Mr. Pothier stated it was literally within the same footprint. Chairman Hawkins asked, is the new building as it stands today within the same footprint as the old building. Mr. Pothier stated yes it is. Wayne Rosa asked how they knew that. Chairman Hawkins stated the new building cannot be within the old footprint. It has been expanded horizontally, because of the addition of the areas adjacent to the breezeway. Mr. Pothier stated the two buildings were connected. His thinking is that the footprint is only of the two buildings and they are just simply permanently attached. He did not expand the length or width of the buildings. Bob Daigle stated he expanded the length of one of them, because the breezeway is gone now. Whatever the breezeway was, the building has expanded by that amount. Mr. Pothier stated he thought the two buildings were the footprint. Chairman Hawkins stated the reason this has come up is the last application they had before the ZBA was

someone was removing an existing trailer on their property and replacing it. They did not put the foundation in the same place as the old one. That meant they were no longer entitled to the grandfather treatment. The structure was not in the same, precise location. They are specifically looking at what the footprint was of the original structure and what it is for the new structure. He understands the difference between what was submitted for approval on the building permit application and what was actually built. On the application Mr. Pothier said there were some "relatively minor changes".

The change the Board is concerned about is that, on the architect's drawings submitted with the building permit application, page A2, it shows the breezeway, but what got built there is built without the breezeway in between. The space has been filled in. Chairman Hawkins stated that Mr. Pothier is stating the width and length of the buildings in gross is the same. It is just that there is no longer a breezeway, there is now a solid wall connecting the structure. Mr. Pothier stated neither structure has encroached. He stated the breezeway area is still there. There is a definitive wall. Chairman Hawkins stated he understood that.

Wayne Rosa stated the total length of the foundation is 33.5 feet and 22.8 feet. Mr. Pothier stated that has not changed. Wayne Rosa asked if the garage was cocked a little bit. Mr. Pothier stated it was and was that way previously.

Bob Daigle asked if the foundation of the boathouse and the foundation of the garage were connected. Mr. Pothier stated that they were. It is a poured foundation on either side of the sluiceway. Bob Daigle stated it was a monolithic wall with an angle on it. Mr. Pothier stated that was correct. Chairman Hawkins asked if the building was no closer to the property line. Mr. Pothier stated it was not any closer to the property line. Wayne Rosa stated it said in the paperwork Mr. Pothier submitted that it varies about a foot to a foot and a half. Mr. Pothier went back and showed a photo of the old structure over the sluiceway that shows the building foundation. He stated it is literally against the property line. He showed a photo of the sluiceway with the new building on it to compare.

Bill Barr stated the space between the two buildings that is currently bridged over the exterior wall is not usable or livable space. Mr. Pothier stated he cannot use it for the garage. He stated, when he submitted his application and drawings for this, he did not put in for a Special Exception or Variance, because he did not think he needed one. With the spirit of putting it in, he realized this was a breezeway on his plan and he intentionally left the breezeway there. So, there are two solid walls, one at the boathouse and one at the garage where the breezeway once existed. He showed the entrance in a photo. From the breezeway you can enter either building.

Bill Barr asked if enclosing the breezeway was for structural support. Mr. Pothier said it was predominantly for safety. Anyone could fall in there. The breezeway is completely covered. There is no possibility of anyone falling in. It made more sense to do that.

Wayne Rosa if Mr. Pothier was willing to remove the breezeway and put back to the original condition. The horizontal aspect would be solved. He stated he did not have a real problem as far as the foundation improvements. He felt Mr. Pothier had improved the situation. He stated, if Mr. Pothier removed the horizontal expansion and got back to the original breezeway, it would solve the horizontal problem. Mr. Pothier stated he was not sure how that would affect the structure of the building.

Bob Daigle stated, from what he could see from looking underneath, it was that the foundation extends and the foundations actually connect, so it is one solid wall. He did not know what the status of the common foundation wall is. It is definitely not constructed per the building plans that were submitted.

Wayne Rosa stated he did not want to touch the foundation, just the framing, leaving the subfloor there to make it a safe situation and he would be happy with it. He asked if Mr. Pothier was willing to do that. Mr. Pothier stated he would consider that, but could not say how that would affect the structure itself. Wayne Rosa stated, when you go through the Special Exceptions in Section 1.05(B)(1)(b), you have to meet every single one of them in order for it to be granted. One of the requirements is the expansion is not in the 100-year floodplain. That knocks it right out. He is trying to solve a problem for Mr. Pothier. He looks at this requirement and it stands right out. Bill Barr stated, what they were saying was, if the structure was constructed to the drawings that were submitted as part of his building permit application, the Zoning Board would not need to address the horizontal expansion. Chairman Hawkins stated that was true if you use the assumption that the buildings were built in the exact footprint of the original structure, which the Board does not know for sure. Wayne Rosa, Bob Daigle and Bill Barr stated that would be inclined to give him the benefit of the doubt using the footprint of the connection that was there before with the planks.

Mr. Pothier stated this was going to take more work and stated he would withdraw his application with prejudice. He

stated he did not have all of the information. Diane Hardy stated the Board could continue. Bob Daigle stated, if he withdraws, he would have to reapply. Chairman Hawkins stated this is an enforcement issue. He did not have any power to tell people to enforce or not enforce the law. People do their jobs. He stated, if Mr. Pothier wanted to continue this for a certain length of time, it would have to be at least 30 days for the Board's internal scheduling purposes. He stated what position the Code Enforcement Officer takes in the meantime, he cannot make any promises about. He also wanted the record to reflect that the Board received a number of emails and a letter from people who are residents of Bryant Rock, Bernard Gordon, Alice Gianni and Michael Smith, Cal Whiton, who is the President of the Bryant Rock Condominium Association, and Rick Martineau. He also has a message on his voice mail, that he hasn't listened to, but he understands it is from Rick Bartnell. They are all opposed to one degree or another. He stated Mr. Pothier would have a chance to look at the correspondence, so he would have a chance to address it. He stated he is not reading them into the record, he will refer them into the record and they are available to the public.

Chairman Hawkins stated this could be continued for 45 days, with the understanding that whatever work he undertakes while this is pending is at his own risk. They make no promises. Mr. Pothier stated the only thing he did since the permits were suspended was put a roof on to protect the integrity of the building. Chairman Hawkins stated, as long as it was clear that whatever Mr. Pothier did was at his own risk. Bob Daigle stated the world is paved with good intentions, but this is a quasi-judicial Board. The Board is working on evidence. Anything Mr. Pothier can provide that proves his point will help. Right now, all the Board has are statements from him saying it matches the footprint and it is the same height or five feet higher. The Board has nothing concrete from which to work. It all amounts to hearsay. He stated whatever Mr. Pothier can do to firm up the concrete numbers, the better. Chairman Hawkins suggested an existing plot plan. Bob Daigle stated his contractor might have some elevations. Mr. Pothier stated he knew some of that information was available, but he did not have any of it with him. He stated the prudent thing would be to continue the application to a future date.

Action

Motion:	Bob Daigle made a motion to continue this hearing to March	4, 2013 at 7:00
Chambers		
Second:	Wayne Rosa	
Vote:	All in favor	

Chairman Hawkins stated, this is not strictly within the Board's jurisdiction, but he was looking at Mr. Pothier's DES wetlands permit. It states, "All work should be in accordance with revised plans by the architect" and he did not think the work had been. He stated Mr. Pothier may want to contact Dori Wiggin at DES, as well.

Agenda Item #4 – Other Business

Chairman Hawkins stated they encourage people to apply for the vacancies on the Zoning Board. It is interesting and he would appreciate it if people would apply.

Wayne Rosa stated, in view of the fact the Board has addressed two of these situations in a row with footprint issues, the Town should have people pin and certify these foundations. Mike Hoffman, Code Enforcement Officer, stated this was clearly not a clean application. He agreed it should not happen this way. He stated this was messy from the beginning and the process should be cleaned up.

Chairman Hawkins updated the Board on the court case with Walter Cheney regarding the Board's decision on Lot 13 Moody Point. He stated Mr. Cheney had filed an appeal to Superior Court and the Zoning Board's attorney filed a motion to dismiss it, because Mr. Cheney's appeal was untimely. That decision is pending.

Agenda Item #5 – Adjourn

Action

Motion: Bob Daigle made a motion to adjourn at 8:01 p.m.

Second: Bill Barr

Vote: All in favor