

ZBA Minutes 07/18/11

NEWMARKET ZONING BOARD OF ADJUSTMENT MEETING JULY 18, 2011 MINUTES

Present: Chairman Hawkins, Wayne Rosa-Vice Chairman, Gerry O'Connell, Bill Barr, Bob Daigle, Diane Hardy-Zoning Administrator

Called to order: 7:23 p.m.

Adjourned: 8:36 p.m.

Vice Chairman Rosa started the meeting. Chairman Hawkins was due to arrive shortly, as was Bill Barr.

Agenda Item #1 - Pledge of Allegiance

Agenda Item #2 – Review & Approval of Minutes

03/21/11

Action

Motion: Bob Daigle made a motion to accept the minutes of 03/21/11

Second: Gerry O'Connell

Vote: Gerry O'Connell abstained due to absence

All others in favor

03/24/11

Action

Motion: Bob Daigle made a motion to accept the minutes of 03/24/11

Second: Wayne Rosa

Vote: Gerry O'Connell abstained due to absence

All in favor

04/13/11

Motion: Bob Daigle made a motion to accept the minutes of 04/13/11

Second: Gerry O'Connell

Vote: All in favor

Agenda Item #3 – Election of Officers

Wayne Rosa suggested postponing this agenda item until Chairman Hawkins arrived.

Agenda Item #4 – Workshop

Potential suggested amendments to the Zoning Ordinance

Wayne Rosa stated some of the members attended the LGC workshop in June and they all came back with ideas.

Bob Daigle stated he wanted to discuss grandfathering. Wayne Rosa stated they have had some issues before them at previous meetings regarding grandfathering. It was suggested that language be added to the Zoning Ordinance to define at what point “abandonment” occurs and when grandfathered rights are extinguished.

Wayne Rosa stated he would like to see the shed ordinance updated for people to avoid having to get a variance in certain situations. Gerry O'Connell stated the setback on a recent zoning application seemed very strict for that particular property. From a common sense perspective, you wouldn't want to locate a shed 25' from a property line. On his own property, it would be right in the middle of his yard, as he is in the zone requiring a 25' foot setback, a less stringent standard should be applied to accessory structures.

Wayne Rosa clarified these are recommendations to the Planning Board. The ZBA does not make the actual changes. Diane Hardy explained the process for zoning amendments.

Chairman Hawkins arrived at 7:32 p.m.

Agenda Item #3 – Election of Officers

It was decided to go back to the election of officers.

Action

Motion: Bob Daigle made a motion to keep the slate of officers the same as it is now

Bill Barr arrived at the meeting at 7:34 p.m. He was brought up to date on what had occurred prior to his arrival

Second: Gerry O'Connell

Vote: All in favor

Agenda Item #4 – Workshop

There was a brief discussion of the recent spring LGC workshop and other workshops available.

Continued discussion on suggested amendments to Zoning Ordinance

Chairman Hawkins stated, at the recent workshop, they learned they could make suggestions for amendments to the Zoning Ordinance.

Discussion of Zoning Amendments

Shed Setbacks

Diane Hardy stated there was a change to the shed ordinance a few years ago allowing a 5' setbacks in certain zones. Perhaps the recommendation might be for the Planning Board to consider adding the R1 zone to the list of permitted zones. There are certain caveats pertaining to shed size, height, location, and a provision that only one shed be allowed with the reduced setback. The rationale at the time was that the R-1 zone has larger, more rural lots and there should be plenty of room for a shed to be located on a lot without the need for a reduced setback, which we have seen is not always the case. The R-1 was the only residential zone excluded from the reduced setback requirements.

Chairman Hawkins stated they could ask the Planning Board to revisit it to see if it does make sense in R1, in light of the ZBA's experience. Gerry O'Connell stated, sensibly, you would not want a shed in the middle of your yard; you would want it on the property line.

Diane Hardy spoke about an issue she and Dan Vincent run into and that is how you define an accessory shed. Are construction trailers, Quonset huts, and storage tents, accessory sheds? If not, how should they be handled in the zoning ordinance. Chairman Hawkins asked what the issue was with Quonset huts. Diane Hardy stated it was a question of aesthetics. Bob Daigle noted under the definition of "accessory shed" those (Quonset hut, temporary canvas structures, etc.) are specifically excluded from the definition. There was a discussion of construction trailers and "pods". The definition in place does not define "pods." Chairman Hawkins stated he did not think it was within the spirit of the ordinance to have these big orange pods popping up all over neighborhoods.

Diane Hardy stated another issue is how many sheds should be allowed on a property. There are areas where there is more than one accessory structure on a residential property. Chairman Hawkins stated that should be suggested to the Planning Board for clarification.

Wayne Rosa stated he understood you wouldn't want to fill your yard with sheds, but how many buildings can you have on a property. If you could have three two-car garages, what is the problem with having three sheds? Can you discriminate that way? Diane Hardy stated the zoning sets a baseline and anyone who wants to exceed that can come in for a variance. Wayne Rosa asked how you could say you can have three garages, but you cannot have three sheds. It doesn't seem fair. He felt they should emphasize to the Planning Board the problem they had with a recent application with setbacks for sheds. He felt the case wasn't fair to the applicant. Diane Hardy suggested sheds could even be allowed by Special Exception, with each case taken up separately.

Abandonment/Grandfathering

Chairman Hawkins mentioned the recent problems with an application in determining timelines and grandfathering. There is no time period for abandonment stated in the Zoning Ordinance. Diane Hardy has seen one year and two years. It might vary with the type of use. The current definition is very broad. Wayne Rosa stated there should be some distinction between abandonment and inability to rent. For example, a business downtown is empty for two years because they can't rent it. Is that abandonment? Gerry O'Connell stated it depends on what was allowed there, whether it was nonconforming. He stated they should ask the Planning Board to think about a time period for abandonment, maybe it should be two years or maybe five years. They shouldn't go to just one year, as people are often away for their work. If they are in the military, they are away for a year or longer. Chairman Hawkins stated it would make our job easier if there was a reasonable time period defining abandonment and noted that the appropriate time period is a question of policy for the Planning Board to consider.

Diane Hardy stated she would convey their suggestions to the Planning Board.

Chairman Hawkins stated it revolves around intent. Thirty years of nobody occupying a property is a pretty strong presumption that the use is abandoned.

Mixed Use

Wayne Rosa stated he had a real problem with the lack of mixed use allowed on Route 108. This has to be addressed. They were told in the seminar they all recently attended economic considerations have to be made. He stated people need the mixed use to make some of these things work, on Route 108 in particular. There could be other areas. Diane Hardy stated that was mentioned by some of the Planning Board members. Gerry O'Connell stated the Economic Development Committee has also talked about this. Chairman Hawkins stated the Town has made a big investment in infrastructure on Route 108 and now it might be appropriate for the Planning Board to consider, as a matter of policy, the transitioning of uses from residential to commercial in some of those areas.

Permitted Uses

Wayne Rosa stated he would like to see the Planning Board take a look at the Table of Permitted Uses and update it accordingly.

Diane Hardy will draft a letter for the Planning Board requesting their consideration.

Amendments to ZBA Rules of Procedure

Chairman Hawkins stated he was concerned with the problem of evidence. What will the Board find acceptable? He struggles when an applicant comes in and says his lot is shaped like this, his neighbor's is shaped like that, etc. He struggles with accepting that. Gerry O'Connell stated they should include a copy of a tax map. Maybe they could be asked to provide that when they bring in their application. Chairman Hawkins stated the burden is on the applicant to bring this in. Diane Hardy stated she met with an applicant this week and advised him what he might want to look at to include in his application. Bob Daigle stated we cannot be making the case for people coming in, we are the "judges". Wayne Rosa stated not everyone can afford an attorney, which is the most organized way to present. The ZBA has an obligation to help people along and guide them a little bit, not do the work for them, but not cut them off and say sorry you didn't bring in your tax map and that's it. Chairman Hawkins stated he is not talking about a "trap door" or a "gong". Chairman Hawkins stated sometimes the evidence may not get presented, because it is not helpful to the person who is presenting it and the Board needs to be sensitive to that possibility. There is no hard and fast way to do this. He didn't have a problem to pulling out a tax map. There is a line between helping applicants find information and making the case for them.

Bob Daigle stated there should be a Statement of Facts for every case. The ZBA decides what the facts are, but cannot make the facts. Diane Hardy stated the ZBA is responsible for forming the Findings of Fact, which is the basis of their decision. Chairman Hawkins suggested people do the best they can, but take advantage of the resources they have at the Town Hall. No one will ever be faulted for coming into the Zoning Office and asking a question. An applicant may put together the best case they can and bring it to the ZBA and it will be considered fairly. No one will ever be faulted for coming into the Zoning Office and asking a question. Diane Hardy stated we try to set up a time with each applicant. We explain the process, the criteria, we explain how you address these things. We give them whatever guidance we can. Chairman Hawkins stated they have to understand the more information, the better the odds of approval. Applicants run the risk there is not enough evidence to support an approval. We should be fair to people, but we have been very lenient in terms of giving people three or four meetings and a lot of guidance to make their cases. This becomes a burden on the Board that we should not have to bear.

Bob Daigle suggested not voting on each fact, but just have a final vote on the variance itself. Gerry O'Connell stated it is about gray areas. We have to make the best decision we can. Chairman Hawkins stated the best possible application is written like something we would write for Findings of Fact.

There was a discussion of what to do if an applicant presented insufficient evidence for an application. Chairman Hawkins stated the best thing the applicant could do is to withdraw the application and reapply, before the ZBA makes a decision. Diane Hardy stated you can ask them for more information and have them come back. For example, if an abutter says this is going to adversely affect their property value, the applicant can go to a realtor and get a statement on how this variance would affect other property values and the Board can consider it and have something tangible at another meeting. Gerry O'Connell stated, if an applicant did not have enough evidence, the Board would deny it. Chairman Hawkins stated we could ask them if they want to withdraw. Diane Hardy stated we could continue to a date certain. Chairman Hawkins stated the ZBA has to be careful about giving applicants advice.

Wayne Rosa asked if they were going to vote on each criteria or take one vote at the end. Diane Hardy stated, as they deliberate, the Board may want to revisit a particular criterion as they go along in a meeting. The application has to meet all five criteria to pass. Bob Daigle stated the reason for denial would have to be listed in the Finding of Facts. That is the important part; we have to be able to articulate why it did not pass.

Gerry O'Connell stated most people have been granted variances on split votes. It could have gone either way. We may need to be more flexible in our thinking. We are very much about what the letter of the law is on hardship. We are here to make sensible decisions. It may be true that one criterion might not be met, but does it cause any harm to anyone else, is it against the spirit of the ordinance. If it hits all the other criteria that last criterion should go that way, as well. If we are looking at that one criterion as the letter of the law, it seems impossible for anyone to get past it.

Chairman Hawkins stated, if the application is denied, it would be spelled out and there would be a vote. Diane Hardy stated that should be part of the motion.

There was a discussion of how to approach the denial of an application. If the ZBA takes one vote at the end, how would they specify the basis for the denial? Diane Hardy stated they may not have to vote on each criterion. You can sometimes tell that everyone's in agreement on one and you could move along from that, but if there is one with a sticking point, you could vote on that one. Bill Barr suggested they could deliberate each criterion separately, but not have to take a vote. Chairman Hawkins stated that is almost what they do now.

Bob Daigle suggested including a statement allowing Alternate members to participate in discussions, even if they are not involved in the final vote. Chairman Hawkins stated they could do that, as long as they had a stated policy for it. He had no problem with this. There is nothing in the Rules of Procedure addressing this now. Diane Hardy would put this together for the next meeting.

Adjourn

Action

Motion: Wayne Rosa made a motion to adjourn at 8:36 p.m.

Second: Bill Barr

Vote: All in favor