

ZBA Minutes 03/21/11

NEWMARKET ZONING BOARD OF ADJUSTMENT
TOWN COUNCIL CHAMBERS
MARCH 21, 2011
7:00 P.M.

Present: Robert Daigle, Diane Hardy (Zoning Administrator), Chris Hawkins (Chairman), Wayne Rosa (Vice-Chairman)

Absent: William Barr, Gerry O'Connell

Chairman Hawkins called the meeting to order at 7:18 p.m.

Pledge of Allegiance

Regular Business

Cheney Property Management – Continuances of two variances. The first references Section 2.05 of the Newmarket Zoning Ordinance to allow a mix of non-residential and residential development in the B1 zone and the second references Section 3.04 to allow a 9.9-foot front yard /setback where 15 feet is required and to allow an 8.2-foot side yard setback where 25 feet is required. The lot is located at 54/56 Exeter Road, Tax Map U4, Lots 12 & 13, B1 Zone. (Continued from 02/07/11)

Cheney Property Management - Continuance of Variance referencing Section 7.02(C)(3) of the Newmarket Zoning Ordinance. The applicant requests a variance to permit six residential units on the second floor of a proposed mixed-use building. Maximum density in the B1 zone for a mixed-use development is one unit per acre. The lots, which will be merged when this development goes before the Planning Board, are .917 acres. Granting of the variance would allow for six units. The lot is located at 54/56 Exeter Road, Tax Map U4, Lots 12 & 13, B1 Zone.

Chairman Hawkins explained there are only three Board members present this evening. The applicant can choose to continue with their application this evening understanding an affirmative vote of three members is required to approve a variance. In the event of a denial, the applicant is unable to appeal based on the grounds there were only three members present. The applicant can also choose to continue this application until a full Board is present to hear the application.

Attorney Mark Beliveau, representing Cheney Property Management, suggested the applicant would like to continue the hearing until there is a full Board in place.

Robert & Jane Dane - Variance, reference Section 3.04(B), of the Newmarket Zoning Ordinance. The applicant requests a Variance to permit the construction of a shed with a 5' setback from the property line, where 25' is required in the R1 Zone. The lot is located at 2 Wiggin Drive, Tax Map R6, Lot 20-45, R1 Zone.

Chairman Hawkins explained there are only three Board members present this evening. The applicant can choose to continue with their application this evening understanding an affirmative vote of three members is required to approve a variance. In the event of a denial, the applicant is unable to appeal based on the grounds there were only three members present. The applicant can also choose to continue this application until a full Board is present to hear the application.

Town Planner Diane Hardy referenced RSA 677:2 explaining the basis on which appeals can be made.

Robert Dane, of 2 Wiggin Drive, explained he is willing to move forward with the application this evening with the understanding there are only three Board members.

Due to the layout of the property, in order to conform to the zoning requirements of a 25-foot setback, the proposed shed would have to be located in the middle of the side yard, which would not be aesthetically pleasing. The property is triangular in shape. There are other zones in Newmarket where the side setback is five feet. There are no properties or structures nearby. The shed would be hidden by pine trees to the nearest abutter. He showed aerial maps depicting where the shed would be in comparison to the land of his abutters. This shed placement would not interfere with the intent of the zoning regulations, because it would not be clearly visible to the public. It would be convenient to store his gardening equipment in the shed, which would be placed near his garden. There is a Quonset hut on one side of the property, which collapsed from the weight of the snow this winter.

Robert Dane explained there is no other appropriate location for the shed. There is a wellhead, stump field and vernal pond area. There is an inflatable pool that will be put up behind the deck. The triangular shape of the property also prohibits a lot of placement choices.

Vice-Chairman Rosa asked if there are any lots adjacent to this property, which are buildable, and not yet developed. Robert Dane answered there are no buildable lots in the immediate vicinity of this property.

Robert Daigle suggested the lot is an odd enough shape to warrant discussion without fear of cumulative impact. Robert Dane explained the lot is a little over two acres. The hardship to this property is the triangular shape of the lot. The applicant is unable to take advantage of the larger part of the property, because it is the front yard.

Town Planner Diane Hardy referenced the accessory sheds section of the ordinance suggesting there are specific zones, within which five-foot setbacks are permitted. The R1 District; however, is not one of those districts.

Chairman Hawkins asked why the shed could not be located where the Quonset hut is currently, which the applicant has suggested would be removed due to damage. Robert Dane explained it was his hope to build a garage. In addition, space needs to be provided to allow a truck to access the well, in the event something went wrong with the well. In addition, the proposed location of the shed is located near the water spigot. Jane Dane explained this shed will also house winter equipment such as the snow blower. It would be very inconvenient to store the snow blower in the very rear of the yard. Robert Dane added a significant portion of the open portion of the yard houses the septic system.

Chairman Hawkins and Town Planner Diane Hardy discussed the purpose of setbacks for accessory structures.

William Barr arrived at 7:46 p.m.

Vice-Chairman Rosa asked how far it was from the proposed shed location to the closest neighbor. Robert Dane noted he was unsure exactly how far. Vice-Chairman Rosa suggested it looked to be between 200 and 250 feet.

Robert Dane explained he understood the concern with setting a precedent, but pointed out this lot is unique from other lots in the neighborhood in terms of its shape and layout.

CRITERION #1

Granting the variance will not be contrary to the public interest.

Robert Dane explained there would be no negative effect on the public based on the discussions earlier this meeting. He added that he and his wife planned to expand their garden. Locating the shed closer to the back of the lot would inhibit the ability to expand the garden. He pointed out the location of the septic system.

Robert Daigle expressed concern with cumulative impact. Town Planner Diane Hardy explained variances aren't about setting precedents. Each application must be viewed on its own merits. Chairman Hawkins agreed, but added there must be specific differences for each property. He did feel precedents could be set, however, inadvertently. He referenced the Eaton case suggesting the Board can consider cumulative impact.

Vice-Chairman Rosa did not see how granting this variance would injure the public or private rights of others. He didn't see how this would set a precedent since each application must be judged individually. Each application must prove a hardship specific to that property, which distinguishes it from other properties in the area.

CRITERION #2

Granting of the variance would be consistent with the spirit of the ordinance.

Robert Dane explained the shed would be aesthetically pleasing and would be placed out of view of the public. The shed would house gardening tools and winter equipment allowing for these items to be kept out of view.

CRITERION #3

Granting the variance would do substantial justice.

Robert Dane explained by allowing the shed, he and his wife would be able to store their gardening tools and winter equipment. There would be no harm to the public in general or specifically to the neighbors.

CRITERION #4

The value of surrounding properties would not be diminished.

Robert Daigle felt the value of surrounding properties would not be damaged considering the Quonset hut would be taken down. The new shed would be an aesthetically pleasing wooden structure.

CRITERION #5

Owing to special conditions of the property that distinguishes it from other properties in the area, denial of the variance

would result in unnecessary hardship because:

No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property.

William Barr did not see a relationship between the purpose of the setbacks as stated in Section 3.04 and the variance request.

Chairman Hawkins struggled with this variance request because there are locations on the property without invading the setback. These locations may not be as convenient or as aesthetically pleasing, but are available nonetheless. Robert Dane suggested placing the shed in compliance of the setbacks would be contrary to the general purpose of the ordinance, because it would not be as aesthetically pleasing to the neighborhood.

Vice-Chairman Rosa suggested the property is unspoiled character with the Quonset hut being removed. Robert Dane noted there are not a lot of lots along Wiggin Drive that are shaped as his lot is shaped. He understood the shed could likely be placed on the lot so it is compliant with setback regulations, but his intent is not only for aesthetics, but for purpose as well. It doesn't benefit him and his wife by locating the shed anywhere else on the property other than the proposed location because of the use the shed will provide. The close proximity to the water spigot and the garden is important because of the storage the shed will provide.

William Barr noted there is substantial area on either side of the driveway where the shed could be located. There is also an area where there are stumps which could be inconvenient to remove, but the shed could be located there as well.

Chairman Hawkins suggested performing a site walk for this application. The Board set a site walk appointment on Thursday, March 24, 2011 at 6:00 p.m.

Action

Motion: Robert Daigle made a motion to continue this application to Thursday, March 24, 2011 at 6:00 p.m. for a site walk at 2 Wiggin Drive.

Seconded: Vice-Chairman Rosa

Vote: All in favor

Action

Motion: Robert Daigle made a motion to continue the Cheney Property Management application and the Robert and Jane Dane application to April, 13, 2011 at 7:00 p.m pending availability of the room.

Seconded: Vice-Chairman Rosa

Vote: All in favor – William Barr abstained

William Barr abstained from the vote because he would not be able to make the meeting.

Old Business/New Business

Adjournment

Action

Motion: Robert Daigle made a motion to adjourn at 8:39 p.m.

Seconded: Vice-Chairman Rosa

Vote: All in favor