



TOWN OF
NEWMARKET
NEW HAMPSHIRE

Zoning Board of Adjustment

February 27, 2023 at 7:00 PM

Town Council Chamber

DRAFT MEETING MINUTES

Present: Bob Daigle (Chair), David Evans (Zoning Administrator), Henry Smith (alternate), and Al Zink

Absent: Wayne Rosa (Vice Chair), James Drago, John Greene (Alternate), and Steve Minutelli,

The Chair called the meeting to order at 7:00 PM.

[time on DCAT 4:38]

Agenda Item #1 Pledge of Allegiance

The Chair appointed alternate **Henry Smith** as a voting member this evening. The voting members are **Bob Daigle, Henry Smith, and Al Zink.**

Agenda Item #2 Acceptance of Minutes

[time on DCAT 6:11]

a. October 24, 2022, January 23, 2023, and February 6, 2023

Motion: **Al Zink** moved to approve the draft minutes of October 24, 2024, January 23, 2023, and February 6, 2023 as written.

Second: **Henry Smith**

Discussion: none

Vote: **Unanimously Approved 3-0-0**

The Chair stated that, if anyone appearing this evening would rather have four or five members voting, they may continue to another meeting. With three ZBA members voting this evening, all approved decisions must be unanimous (3-0-0).

Agenda Item #3 New Business

a. Read by the Chair

[time on DCAT 7:33]

Stephen Lyons - Public hearing for an application for an Appeal from an Administrative Decision to permit the installation of a kitchen island without including the electrical outlet as required by NFPA 70 National Electric Code. The property is located at 11 Moody Point Drive, Tax Map R2, Lot 40, R1 Zone. This item was continued from February 6, 2023.

Mr. Lyons rose to discuss the Appeal of Administrative Decision as outlined in his letter.

The Chair opened the meeting to public comment at 7:05 PM. [time on DCAT 9:33]

The ZBA is being asked this evening by Mr. Lyons to determine if the Code Enforcement Officer erred in the denial of the request for relief (lettered dated November 14, 2022). The Chair outlined his understanding of the issue and asked the Code Enforcement Officer for clarification of his decision about the enforcement of the current electrical code. The ZBA does not have the authority or discretion to change any codes. Although the National Electric Code changed on January 1, 2023, the State of New Hampshire has not adopted the change. The Chair asked for discussion by the members and all were in agreement to uphold the administrative decision.

The Chair closed public comment at 7:17 PM. [time on DCAT 13:07]

Mr. Lyons asked if there was something written about this policy regarding no relief and the Zoning Administrator referred him to RSA 155-A:2x.

Motion: Bob Daigle moved to uphold the decision of the Code Enforcement Officer in the letter dated November 14, 2022.

Second: Al Zink

Discussion: none

Vote: Unanimously Approved 3-0-0

The Chair advised Mr. Lyons that he has 20 days to appeal this decision of the ZBA. The Chair also suggested that Mr. Lyons could contact the State Building Code Review Board (BCRB) in Concord.

<https://www.nh.gov/safety/boardsandcommissions/bldgcode/>

b. Read by Chair [time on DCAT 15:51]

Charles & Carole Smart - [Public hearing for an application for a Special Exception reference Section 32-5\(2\)\(A\) of the Newmarket Zoning Ordinance, Smart to permit a 13' x 14' addition to the existing house, which is an expansion of a nonconforming structure, within the buildable area. The property is located at 181 Grant Road, Tax Map R7, Lot 8-4, R1 Zone.](#)

Mr. Smart addressed the Board and reviewed the history of 181 Grant Road and his application request for an addition to his home.

The Chair opened the meeting to public comment at 7:16 PM. [time on DCAT 19:53]

The Zoning Administrator has received no letters from the public. The Chair polled the members and they had no questions or concerns.

Hearing no comments, the Chair closed comment at 7:17 PM. [time on DCAT 20:34]

Motion: Al Zink moved to approve the special exception application from Charles and Carole Smart petitioning the Zoning Board of Adjustment for approval under 32-

5(2)(a) of the Municipal Code of the Town of Newmarket to permit the horizontal expansion of a nonconforming structure by connecting the nonconforming garage to the conforming house at 181 Grant Road (Tax Map R7 Lot 8-4) within the R-1 zoning district, as the application satisfies the enumerated standards, pursuant to Sec. 32-5(2)(a) of the Municipal Code of the Town of Newmarket.

Second: Henry Smith

Discussion: none

Vote: Unanimously Approved 3-0-0

c. Read by Chair [time on DCAT 23:07]

[Paszec Investors Inc - Public hearing for an application for a Variance from Section 32-49 of the Newmarket Zoning Ordinance](#) to permit a mixed residential and commercial development in the business zone where residential uses are not permitted. [A Variance is also requested from Section 32-89 Dimensions Table of the Newmarket Zoning Ordinance](#) to permit a higher density of maximum residential density of 2 units/acre. The applicant is looking to develop this property into a mixed-use space, with three buildings, one to include six first floor retail spaces and six residential apartments above, the second to include five townhomes and the third to include four townhomes. The property is located at 3 North Main Street, Tax Map U2, Lot 286, B1 Zone.

[Lindsay Donohue](#), Esq., from Keane & Macdonald Attorneys at Law, rose to address the ZBA. She is representing Paszec Investors, Inc. tonight. Also present this evening are the two directors of Paszec Investors, Nicholas Pascal and William Zecker. The engineer for the project, also present, is Alex Ross P.E. of Ross Engineering. LLC. and the architect for this project, Charles Hoyt, Charles Hoyt Designs Inc. Ms. Donohue described the application and the property. She stated that the location of this property near the 'gateway' to Town makes this an ideal project to propose. Paszec Investors currently own 53 Main Street and Durham Books. They purchased the 3 N. Main Street property in 2006.

[Alex Ross](#), P.E. spoke next. He wanted to discuss the 3.2 acre parcel and handed out color aerial photos to the members. The property was originally an old farm house and barn for a single family. The deeds have been traced back 200 years to historical Newmarket families. Once the farm house and barn were gone, the DOT used the property as a staging area for the work being done on Rt. 108. To prepare the existing conditions site plan, they worked with Mark Jacobs (Consulting Environment Scientist), a certified wetland and soil scientist who defined the wetlands and some ledge. The driveway is located in the southernmost area of the parcel. He pointed out the areas of foliage for buffers around the wetlands and the abutting properties. A portion of the parking area is planned to be pervious pavement. Mr. Ross mentioned two meetings that were held with Town officials and the officials he has met with include: Diane Hardy, former Director of Community Development, Peter Rowell, former Interim Building Inspector, Bart McDonough, Director of Planning and Community Development, and Stuart Arnett of ADG Solutions, the Planning Consultant hired by the Town to discuss the 'gateways' to Town along Rt. 108.

[Charles Hoyt](#), the designer, spoke next. He was hired by Paszec Investors in 2006. In

2020, the team met with Diane Hardy to get the Town's input about what might be a good fit for the site. After a second meeting, they decided to reduce the density and save as much green space as possible. A 'colonial' design was decided upon for the mixed-use building facing the frontage onto Rt.108 and to place the three and five unit buildings in the back.

[time on DCAT 37:05 - 42:27]

Lindsay Donohue rose to go through the formal five variance criteria outlined in the application package.

The Chair opened the meeting to public comment at 7:40 PM.

[time on DCAT 42:28]

Speakers:

#1 Maura Milner, 3C Wade Farm Condo. She is the current President of the HOA and is speaking for the association. She read her statement into the record and provided a copy for the minutes. Please see **Addendum** pages 7- 8.

The Chair asked for a brief two minute recess.

[time on DCAT 49:08]

#2 Ray Daley, 1D Wade Farm Condo. He is the current Treasurer of the HOA, but is speaking as a resident. He had questions about the number of bedrooms in each apartment and each condo. He was also interested in the number of garage spaces for each condo and for each apartment. He does not see that they have planned correctly for the number of spaces that might be required. The Chair pointed out that a discussion of parking spaces is the purview of the Planning Board. Mr. Daley is still concerned about the quality of life for the abutters: 1) the number of bedrooms i.e. the number of residents, 2) the parking density i.e. oil leaks etc., and 3) the possibility of other potential nuisances from many residents in one small area may cause.

[time on DCAT 54:48]

#3 Ben Buckley, 21 Maplecrest Street. He mentioned the clear need for affordable rental housing in Newmarket, but he is questioning whether or not these units would be affordable. He said that apartments in Portsmouth are around \$1400/mo and the currently available apartments cost upwards of \$2000/mo. Ms. Donohue could not predict what the apartments would rent for as the project is too early in the planning stages.

[time on DCAT 57:08]

#4 Jeff Armstrong, 2C Wade Farm Condo. He read the purpose statement of the B-1 District from the ordinance.
Sec. 32-49. B-1 district:

(a) *Purpose.* The purpose of the B-1 district shall be to provide areas suitable for businesses, which serve the community and/or people passing through town on Route 108. It is further intended that these businesses be segregated from residential uses to prevent conflict and undue impact on residents by business development.

He is concerned that the applicant has determined that there are so many

1 nonconforming properties in the area that they should be permitted to also construct a
 2 property in a nonconforming way in the B-1 Zone. He wants to encourage the Board to
 3 deny the applicant's requests.

4 [time on DCAT 59:28]

5 **#5 Matt Van Buren, 7 N. Main Street.** He expressed general concerns and impacts
 6 that this development might have on the wildlife in the area. He lives on the property
 7 that directly abuts the applicant. He is aware of specific wildlife living in the area: a
 8 flock of wild turkeys, a deer family with 4-5 members, and a hawk that has nested
 9 nearby. The development of this property could jeopardize the protection of such
 10 wildlife. He is also concerned about potential light pollution with this added population
 11 density. The Chair mentioned that these are all concerns to be taken up with the
 12 review at the Planning Board level.

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 14 [time on DCAT 1:02:12 - 1:15:44]

15 The Chair read into the record a **letter received from Mr. James M. Phelps,**
 16 4 1/2 N. Main Street. The letter is attached as an **Addendum** to these minutes on pages
 17 9 -11.

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 19 [time on DCAT 1:16:11]

20 **#6 James M. Phelps, 4 1/2 N. Main Street.** In addition to his letter, Mr. Phelps wanted
 21 to add that NHDOT did not use the property while working on Rt.108. The NHDOT
 22 hired a contractor who arranged to use the property. He also wanted to point out a
 23 creek to the north side of the property. The property slopes down toward this creek
 24 which flows directly into the Lamprey River. He was curious, if any of the Town officials
 25 who met with the team, had encouraged the Paszec team to seek approval of this plan
 26 prior to any zoning changes. The density of this property will increase by 350%.

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 28 [time on DCAT 1:19:25 - 1:22:04]

29 **#7 William Zecker, Paszec Investors.** He spoke about his history of working in
 30 Newmarket with Nicholas Pascal for over 30 years and how they have always been
 31 willing to work with the Town.

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 33 The Chair closed public comment at 8:19 PM.

34 [time on DCAT 1:22:34]

35 The Chair offered Ms. Donohue an opportunity to respond. She rose to thank all of the
 36 members of the public who came this evening and offered comments. She reiterated
 37 the need for housing in Newmarket and feels that this project will provide that within a
 38 walkable distance to the wonderful downtown area. Mr. Ross wanted to address some
 39 of the comments as well. He mentioned that if the ZBA approved the variances that this
 40 would just be the beginning of a very long process involving the public, the Planning
 41 Board, the DPW, and NHDES. Mr. Hoyt spoke next about the process so far. They
 42 have not done any of this planning without the input of the Town. They truly believe that
 43 this is a good project for this parcel.

44 Ms. Donohue asked the Board for their thoughts. All members commented. Then the
 45 Chair asked "what specific and unique aspects of this property make it so that you must
 46 have relief so that the project can comply with the ordinance? What is the hardship?"

Ms. Donohue asked to continue this hearing until March 27, 2023 to give her an opportunity to discuss the comments from the meeting this evening with the team.

[time on DCAT 1:39:01]

Motion: Al Zink moved to continue the public hearing to the March 27, 2023 ZBA meeting for an application by Paszec Investors for a (1) Variance from Section 32-49 of the Newmarket Zoning Ordinance to permit a mixed residential and commercial development in the business zone where residential uses are not permitted and for a (2) Variance from Section 32-89 Dimensions Table of the Newmarket Zoning Ordinance to permit a higher density of maximum residential density of 2 units/acre. The property is located at 3 North Main Street, Tax Map U2, Lot 286, B1 Zone.

Second: Henry Smith

Discussion: none

Vote: Unanimously Approved 3-0-0

Agenda Item #4 **Adjourn**

[time on DCAT 1:40:35]

Motion: Al Zink moved to adjourn the meeting at 8:36 PM.

Second: Henry Smith

Discussion: none

Vote: Unanimously Approved 3-0-0

Respectfully submitted,

Sue Frick
Recording Secretary

DCAT:
https://videoplayer.telvue.com/player/XSekdEeRsk0JHQVHAvKJVka7_5VjxKP/videos

1 **ADDENDUM – Maura Milner Letter pg 1**

Hi,

My name is Maura Milner, I am here tonight as a resident of Newmarket and of Wade Farm Condos. I am the current president of the association.

The association and I would like to express our thoughts and concerns regarding the request for the two variances requested by Paszec Investors, Inc..

One of the best things in Newmarket has been its approach in developing the downtown area and the southern entrance gate way to the town.

The entire community lead by boards like yourselves and so many other citizens of the community crafted long term goals after engaging in thoughtful dialog and created a collaborative approach which offered the town vision of Newmarket.

We believe this project will not allow the town to do the same thoughtful due diligence for the northern gateway. In short it would be like putting the cart before the horse. Both entrances need the same thoughtful approach.

To show how important this is to the town's future, the town worked hard to get grant money to do a full review of the northern gateway. Any future development in the north end should not be done till the gateway plans are in place.

Our other concerns are the two requests for variances.

#1- the request for a density variance.

This request if granted would allow for condos as well as apartments that will more than exceed the present rules and regulations by more than double the present rule of two units per acre. I ask you to really contemplate again what this really means as this request will allow for more than double the present rules and regulations.

The variance request stated they want to get most out of 3.2 acres. Is that what is best for Newmarket? The request compared itself to Wade Farm Condos, but we are strictly a residential community of 16 units on 23 acres of land.

2 the request for a residential and business use in a strictly business zone.

This piece of property is presently zoned for business. The developer has requested to make it a combination of business and residential.

This request will again drive the development of the northern gateway before the town has a vision for the gateway.

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1 **ADDENDUM** – Maura Milner Letter pg 2

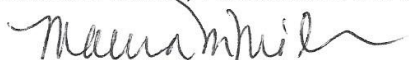
We have seen what has happened to water pollution this past few weeks in Ohio and even our own town of Newmarket with the oil spill.
Our well is close to this possible development. What type of guarantees will we have for protecting our well water and the wetlands.
We have concerns for possible foundation damage, decrease in property value, and traffic flow on 108.

In summary We have a wonderful opportunity here to ensure both gateways have a thoughtful and thorough review for development.
We as a community are hoping that our concerns are addressed as part of the process.

I and the entire community of Wade Farm thank you for your consideration in this matter.

Thank you,

Maura M Milner, President of the Wade Farm Condo Association Board



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1 **ADDENDUM – James Phelps Letter pg 1**
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Town of Newmarket
Zoning Board of Adjustment

February 23, 2023

Re. 3 North Main St.
Map U2 Lot 286 Zone B1
Variance Requests

Sir / Madam:

I am writing to the Newmarket Zoning Board of Adjustment (ZBA) in reference to the above noted property owner's (Paszec Investors, Inc., (Paszec)) request for variances in regards to Newmarket Zoning Ordinances Section 32-49 and Section 32-89. The undersigned believes that Paszec is also indirectly seeking variances toward Sections 32-5 and Section 32-56 as well, which I encourage the ZBA to also strongly consider.

The undersigned is adamantly against Paszec's application and apparent associated intentions as they are not in the best interest of the Public nor, the Town of Newmarket and the ZBA should deny the above noted application in its entirety for Three (3) primary reasons.

1. Paszec's application ignores and is in direct conflict with, Sections 32-5, 32-49, 32-56 and 32-89, which were established by the Town of Newmarket to best serve the town, its residents and the general public.
2. Paszec's application seems to be attempting to manipulate previously approved North Main St. property uses and their diversity for Paszec's benefit, as well as, what may be a typographical error or oversight, within section 32-89 resulting in some superficial ambiguity.
3. Paszec's application is trying to circumvent current zoning and ignore the best interest of the town residents by taking advantage and partially perpetuating, what they believe to be, Newmarket's future intentions and potential revised Zoning Ordinances for the North Main St. gateway.

The undersigned will not address the Paszec application claims within Criteria 1 thru 5 as their overall absence of validity or merit, should be self-evident when weighing ordinance sections language and the Town's authority in creating zoning ordinances as it sees fit.

1. A. Paszec's application references Section 32-49 B-1 District which states in part:
"The purpose of the B-1 district shall be to provide areas suitable for businesses, which serve the community and/or people passing through town on Route 108. It is further intended that these businesses be segregated from residential uses to prevent conflict and undue impact on residents by business development."

Paszec's application clearly ignores this section's language and in fact, Paszec would like to have businesses and resident housing, co-mingle within the same property.

- B. Paszec's application regrettably does not reference Section 32-5 Non-Conformity which states in part:

"(a) Any non-conforming use may be continued, except that if any such non-conforming use is abandoned, desisted, either voluntarily or by legal action, or caused to be discontinued, for a period of two (2) years, then any subsequent use of the building, other structures or use of the land shall be required to be in conformity with the provision of these regulations."

"(b) Certain districts prohibit single-family residential use, and in such districts, the pre-existing single-family use is nonconforming. To prevent this chapter from being unduly burdensome... single-family houses shall be permitted to be physically expanded, and accessory structures added or expanded. ~ There shall be no increase in the number of residential units on the lot, and accessory apartments shall be prohibited."

Paszec's can not maintain that because there was once a residential structure on the land (or that there are neighboring residences) that creating a largely residential development will not be in direct conflict with the Town's established zoning requirements and their spirit therein.

ADDENDUM – James Phelps Letter pg 2

Town of Newmarket
Zoning Board of Adjustment
Page 2 of 3

February 23, 2023

Re. 3 North Main St.
Variance Requests

1. Continued...

C. Paszec's application regrettably does not reference Section 32-56 Permitted Uses which clearly prohibits any residential units whatsoever within District B-1.

2. Paszec's application seeks a variance from Section 32-89 Dimensions Table apparently relative to the density of units upon the 3.2 acre parcel.

Regrettably, the aforementioned tables forth row heading is currently labeled "Maximum **Residential** Density" which, when applied to Zones B-1 and B-2, is in direct conflict with the clear and detailed language within sections 32-5, 32-49, 32-56 and therefore, must be considered as such and perhaps then, it was mistakenly inserted or overlooked in consideration that the majority of ordinance zones include some type of residential units. It has been suggested that the use of the word "Residential" within the tables heading regarding density may have been inserted to apply to land that currently has a residential property. However, this is not possible in consideration of Sections 32-49, 32-56 and when particularly weighed with the clear and detailed language within Section 32-5 and specifically, in reading the last sentence within 32-5 (b) "*...There shall be no increase in the number of residential units on the lot, and accessory apartments shall be prohibited.*"

If we were to interpret the use of the word "Residential" within the table regarding density in any measurable form, we would then have to conclude that business or commercial units upon any land zoned B-1 and B-2 is prohibited because the word "Business" has not been utilized. As we know, this is not the case as business or commercial units within zones B-1 or B-2 are obviously permitted.

It is clear that the use of the word "Residential" within the table of 32-89 in regards to density is a current oversight and if instead, the heading were to perhaps read "Maximum **Unit** Density", that would provide the unilateral clarity needed and redirect applicants to sections 32-49 and 32-56 in order to clarify what is meant by the word "Unit". The clear and detailed language within sections 32-5, 32-49 and 32-56 clearly provide the intent of the town and in no way can be undermined by perhaps, a mistaken use of a word within the dimensional table in regards to density.

As a result, the applicant is not only seeking to provide residential units where they are not currently permitted but, provide a **350% increase (6 permitted vs. 21 currently applied for)** in the allowable number of units on this 3.2 acre parcel. It may be interpreted that Paszec is perhaps, seeking such an egregious increase in density within a non-conforming use of one kind or another, so that the ZBA approves an increase in density of some kind for Paszec's benefit.

The current codes were established for good reason and I encourage the ZBA to deny this application unless, it were to be revised to indicate Six (6) business units as the spirit of the various Ordinance Sections clearly indicate.

This resident and abutter to 3 North Main St., will strongly oppose any development other than one that is promoting business/commercial units and hopefully, no more than Six (6) units for the 3.2 acre parcel.

1 **ADDENDUM – James Phelps Letter pg 3**

Town of Newmarket
Zoning Board of Adjustment
Page 3 of 3

February 23, 2023

Re. 3 North Main St.
Variance Requests

3. It is understood that Newmarket has been reviewing the current zoning for North Main St. for many years and it is my further understanding that the current zoning may well change in the future while, that time is obviously not now because the zoning has not changed. It is my understanding from at least Stuart Arnett of ADG who has consulted with Newmarket concerning North Main St. and the other gateways to town, that Newmarket is applying for grant money in order to better facilitate any future changes to the zoning. It is my understanding that grant money would be used for, but not limited to; establishing an architectural consultant to review and properly facilitate any proposed new development. Regardless of the town's application(s) for grant money, it is quite clear that Newmarket will be appropriately reviewing all considerations and perhaps have additional consultants in place before making any changes to the current zoning.

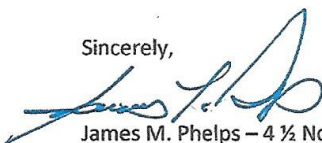
As most within the ZBA and Planning Board may know, Newmarket conducted extensive research and public outreach going back to at least 2012 concerning the zoning of North Main St. and more recently, hired ADG in 2019 to further assist with the towns planning and associated zoning ordinances. In consideration of these efforts and the time that has elapsed, it is clear that Newmarket has been performing its thorough due diligence before making any changes to the current B-1 zoning for North Main St. and the proper facilitation thereof. It is my understanding that it may be only another 1 ½ years before additional consultants and/or before there are any changes to the current zoning and it is my opinion that 1 ½ years is not a long time particularly, when considering the amount of time that has passed and what is at stake.

To put it kindly, it appears that Paszec is trying to put their personal "cart before the horse". By doing so however, Paszec would be undermining Newmarkets efforts for at least the last Eleven (11) years to the potential lasting detriment to Newmarket. No offense intended, but it also appears that Paszec may be trying to manipulate Newmarket's desire to eventually change the zoning at North Main St. and Paszec wants to do so before those changes have been finalized and before the associated administrative infrastructure are in place. I encourage the ZBA to deny this application in its entirety for this additional reason and I encourage Paszec to consider that they have owned the property since 2006 and that 1 ½ years or so, is not a lot of time from now.

The bottom line from my perspective is that the zoning ordinances and associated land uses are under the authority of Newmarket alone and while Newmarket may be changing the zoning someday, Newmarket needs to be the sole catalyst toward any changes and obviously, Newmarket is not changing the zoning until, Newmarket is ready.

The undersigned respectfully requests that the ZBA deny the current application by Paszec in its entirety for any one of the above Three (3) reasons. When these reasons are held in concert as a whole, it should be obvious that denying this application at this juncture, is in the best interests of Newmarket's efforts and intended future allowable use of North Main St. properties.

Sincerely,



James M. Phelps – 4 ½ North Main St., Newmarket NH