



TOWN OF **NEWMARKET** NEW HAMPSHIRE

Zoning Board of Adjustment

May 1, 2023 at 7:00 PM

Town Council Chamber

DRAFT MEETING MINUTES

Present: Bob Daigle (Chair), Wayne Rosa (Vice Chair), ,
Al Zink, and David Evans (Zoning Administrator) and Henry Smith (Alternate)
Absent: James Drago, Steve Minutelli, and John Greene (Alternate)

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

[time on DCAT 4:03]

#1 Pledge of Allegiance

The Chair appointed **Henry Smith** as a voting member this evening. The Chair then asked to move Regular Business up in the agenda. Members has no objections.

The Chair asked Mr.Smart if he wished to proceed with four voting members or postpone until later date when a full board of five members would be present. Mr. Smart had no objection to proceeding with four members.

#2 Regular Business

[time on DCAT 5:42]

a. Charles and Carole Smart - There will be a public hearing for an application for an Equitable Waiver of Dimensional Requirements. A recent Special Exception permitted the house (a conforming structure) to be attached to the garage (a non-conforming structure). It was discovered the garage was closer to the property line than originally thought. The granting of the Waiver would clear any future issues regarding this. The property is located at 181 Grant Road, Tax Map R7, Lot 8-4, R1 Zone.

Mr. Smart addressed the members with a brief history of the property.

The Zoning Administrator's report also gave the history of the property for the Board: "181 Grant Road is located on the southern side of the road approximately 850 feet east of Hilton Drive. In 1995-1996 a special exception and building permit were approved to convert an existing shed into a garage. The belief at the time was that setback was 15 feet. The setback at the time was 30 feet. The ZBA granted a Special Exception in February 2023 allowing the connection of the non-conforming garage to the conforming house. The entirety of the structure is now considered a non-conforming structure due to the garage violating the setback requirements for the zone. Any additional expansion, either vertical or horizontal, would require a Special Exception from the ZBA. A recently

completed survey in conjunction with an updated septic design revealed that the garage is closer to the property line than previously thought. There are no records in the property file showing that enforcement action was undertaken by the Town in regards to the violations of the setbacks.”

The Chair asked the Zoning Administrator if he received any comments from the abutters. No abutters had comments.

The Chair opened the meeting to public comment at 7:05 PM. [time on DCAT 7:48]

No members of the public had any comments.

The Chair read the following four criteria for the granting of an Equitable Waiver of Dimensional Requirement from the Zoning Administrator’s Summary Report:

1) That the violation was not noticed or discovered by any owner, former owner, owner’s agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot of other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value. 2) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner’s agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner’s agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority, 3) That the physical or dimensional violation does not constitute a public nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property. 4) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected. **The standards for the four criteria listed above appear to be met.**

The document continues with an alternative consideration for the ZBA in lieu of the fourth criteria mentioned above: 1) The owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected. **This standard has also been met.**

Henry had a question about “failure to inquire” and about the special exception just approved a few months ago. Mr. Smart explained the circumstances of not identifying the issue sooner and the discovery was not made until the recent requirement for a new septic design.

The Chair closed public comment at 7:15 PM. [time on DCAT 18:27]

Action

Motion: **Al Zink** moved to approve the Equitable Waiver of Dimensional

Requirements pursuant to NH RSA 674:33-a from Charlie and Carole Smart for the non-conforming structure located at 181 Grant Road (Tax Map R7 Lot 8-4) within the R1 zoning district as the application satisfies the enumerated standards, pursuant to NH RSA 674:33-a.

Second: Wayne Rosa

Discussion: none

Vote: Unanimously Approved 4-0-0

#3 Acceptance of Minutes

[time on DCAT 20:10]

a. February 27, 2023

Action

Motion: Al Zink moved to approve the draft minutes of February 27, 2023 as written.

Second: Bob Daigle

Discussion: none

Vote: Approved 3-0-1 (Wayne Rosa abstained)

b. March 27, 2023

Action

Motion: Al Zink moved to approve the draft minutes of March 27, 2023 as written.

Second: Bob Daigle

Discussion: none

Vote: Approved 3-0-1 (Henry Smith abstained)

#4 Old/New Business

[time on DCAT 23:02]

Al Zink wanted to thank Dave for all of his help making the process of the ZBA meetings go so smoothly. His Zoning Administrator Reports are invaluable. All members agreed, Thank you Dave!

#5 Adjournment

[time on DCAT 24:44]

Action

Motion: Henry Smith moved to adjourn the meeting at 7:21PM.

Second: Al Zink

Discussion: none

Vote: Unanimously Approved 4-0-0

Respectfully submitted,

Sue Frick

Recording Secretary

DCAT:

https://videoplayer.telvue.com/player/XSekkdEeRsk0JHQVHAvKJVka7_5VjxKP/videos