



TOWN OF NEWMARKET NEW HAMPSHIRE

Zoning Board of Adjustment

July 10, 2023 at 7:00 PM

Town Council Chamber

DRAFT MEETING MINUTES

Present: Wayne Rosa (Vice-Chair), David Evans (Zoning Administrator), Henry Smith (Alternate), and Al Zink.

Absent: Bob Daigle (Chair) and James Drago.

The Vice-Chair called the meeting to order at 7:03 PM.

[time on DCAT 6:04]

The Vice-Chair appointed **Henry Smith** (Alternate) as voting member this evening. The three voting members will be: **Wayne Rosa, Henry Smith, and Al Zink.**

1. Pledge of Allegiance

2. Acceptance of Minutes

[time on DCAT 6:40]

a. June 12, 2023

Action

Motion: **Al Zink** moved to approved the draft minutes of June 12, 2023 as written.

Second: **Henry Smith**

Discussion: none

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

The Vice-Chair is filling in for Chair Bob Daigle this evening and he asked Mr. Smart if he was willing to proceed with three voting members this evening. Mr. Smart agreed.

3. Regular Business

[time on DCAT 7:56]

Read by the Vice- Chair:

a. There will be a public hearing for an application for a Special Exception from Section 32-87(4)(b) of the Newmarket Zoning Ordinance, requested by Charles & Carole Smart, to permit the installation of a propane tank in relation to the setback requirements established when the subdivision was approved. The lot is located at 181 Grant Road, Tax Map R7, Lot 8-4, Zone R1.

Mr. Smart rose to speak about the application for a Special Exception to install a new 500 gallon propane tank. The tank proposed will be 9'11" long and will be outside of the setbacks currently permitted on this lot. He is asking to allow the tank placement based on the setback requirements of 10' when the subdivision was first approved in 1977.

A brief recess was approved by the Vice-Chair at 7:09. The meeting resumed at 7:12 PM.

Mr. Smart continued with his presentation. He explained that there was no other location to put the tank, as he needs additional propane storage to heat the new addition to his home after recently receiving approval for a Special Exception to expand a non-conforming structure and an Equitable Waiver to make the non-conforming structure conforming. The tank location will be where the generator sits now on the plans provided to the ZBA.

The Chair opened the meeting to public comment at 7:15 PM. [time on DCAT 18:16]

There were no comments from the audience.

The Chair closed public comment at 7:16 PM. [time on DCAT 18:26]

Dave affirmed that there were no letters received and all abutters were noticed.

Before the motion, **Al Zink** wished to refer to the staff report on page 2 which states that one of two standards must be met as the Special Exception is considered. The first related to lot size and is mute and the second describes setback requirements. **Al Zink** proceeded to read the second standard into the record that the ZBA determines that the former setback requirements are sufficient to secure the purposes of Section 32-87(4)b of the Municipal Code:

" #2) The proximity of a structure to abutting lots affects fire safety, the provision of adequate sunlight and air circulation for this and neighboring lots and structures, and the availability of space for site amenities such as landscaping, driveways, and so forth."

In his opinion, the Special Exception application before the ZBA falls under #2. No other members had comments or suggestions.

Action

Motion: **Al Zink** moved to approve the special exception application from

Charles and Carole Smart petitioning the Zoning Board of Adjustment for approval under 32-87(4)b of the Municipal Code of the Town of Newmarket to permit the installation of a propane tank in relation to the setback requirements established when the subdivision was approved at 181 Grant Road (Tax Map R7, Lot 8-4) within the R1 zoning district, as the application satisfies the enumerated standards, pursuant to Sec. 32-87(4)b of the Municipal Code of the Town of Newmarket, New Hampshire.

Second: Henry Smith

Discussion: none

Vote: Approved 3-0-0

4. New/Old Business

[time on DCAT 22:39]

There was no new/old business this evening.

5. Adjournment

[time on DCAT 22:55]

Action

Motion: Al Zink moved to adjourn the meeting at 7:20 PM.

Second: Henry Smith

Discussion: none

Vote: Approved 3-0-0

Respectfully submitted,

Sue Frick

Recording Secretary

DCAT:

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TOWN OF NEWMARKET NEW HAMPSHIRE

Zoning Board of Adjustment

August 7, 2023 at 7:00 PM

Town Council Chambers

DRAFT MEETING MINUTES

Present: Bob Daigle (Chair), Wayne Rosa (Vice-Chair), David Evans (Zoning Administrator), and James Drago

Absent: Henry Smith (Alternate), Al Zink, and Steven Minutelli

The Chair called the meeting to order at 7:11PM.

[time on DCAT 13:57]

The three voting members will be: **Bob Daigle, Wayne Rosa, and James Drago.**

1. Pledge of Allegiance

2. Acceptance of Minutes

a. July 10, 2023

Approval of the minutes for July 10, 2023 was postponed until the next meeting.

The Chair asked the applicant if he had any reservations about presenting to the ZBA this evening with only three voting members. Attorney Henry Stebbins, representing the applicant, had no objections.

3. Regular Business

[time on DCAT 15:03]

Read by the Chair:

a. There will be a public hearing on an application for a Variance (#1) from Section 32-56 of the Newmarket Zoning Ordinance Permitted Uses Table R2 District to allow mixed use development in the R2 District and a Variance (#2) from Section 32-46A M2A District of the Newmarket Zoning Ordinance regarding the project containing 62 parking spaces and a Variance (#3) reference Section 32-89 Dimensional Table M2A & R2 Districts of the Newmarket Zoning Ordinance regarding allowing 41 residential units and a Variance (#4) reference Section 32-46A(b)(e) M2A District of Newmarket Zoning Ordinance to allow residential units on the first floor due to frontage on South Main Street, requested by CC Railroad Street Newmarket LLC.

Properties involved:

1 Railroad Street, Tax Map U3, Lot 138, M2A District
 3 Railroad Street, Tax Map U3, Lot 138A, M2A District
 5 Railroad Street, Tax Map U3, Lot 26, M2A & R2 Districts
 The application is available to view in the Zoning Office at the Newmarket Town Hall during business hours.

Attorney Stebbins addressed the Board and described the proposed new use of a larger version of their 2022 proposal. This project will be a mixed use building containing 41 residential units (19 studios and 22 one-bedroom apartments) and 3 commercial units with a total footprint of approximately 10,200 sq. ft. This would result in 35 residential units in the M2A Zone, and 6 residential units in the R2 Zone. Attorney Stebbins read from the description of the M2A Zoning District: *“to protect, enhance, and expand the commercial, social, civic and residential functions of the downtown village area.”* He also read a portion of the Town’s Master Plan: *“promote repurposing and/or redevelopment of vacant and deteriorating properties that would contribute to expanding the Town’s tax base”*. He specifically pointed out that the size of these residential units would likely not cause a bump in the school budget, but will broaden the Town’s tax base.

The Chair opened the meeting to public comment at 7:38 PM. [time on DCAT 40:47]

Mr. Brett Nelson, 10 Railroad Street. Mr. Nelson lives directly across from these properties and his home looks directly at the proposed parking lot entrance and exit. He described Railroad Street as a relatively quiet dead end street and feels that the proposed number of parked cars and the very large three story building will definitely not fit into the neighborhood. He encourages everyone to please take a stroll down Railroad Street,

Dave Evans reported that no letters or emails have been received from the public.

The Chair closed public comment at 7:40 PM. [time on DCAT 42:17]

The Board continued with more questions and discussion with the applicant. **Wayne** was concerned about the traffic at South Main Street and Railroad Street. Mr. Ben Stebbins, the applicant, was asked about the size of the units. He stated that the average studio would be approximately 500 sq. ft. The applicant also mentioned that they may change from 3 commercial spaces to 1 commercial space.

The members and the applicant had a lengthy conversation regarding financial hardship.

[time on DCAT 59:43]

Variance Request #1:

There was a lengthy conversation and the members reviewed the 5 criteria for approval.

Action

Motion: James Drago made a motion to grant a variance request from CC Railroad Street Newmarket LLC, petitioning the Zoning Board of Adjustment for relief from **Section 32-56 Table of Permitted Uses** of the Municipal Code of the Town of Newmarket to permit a mixed-use development in the R2 Zoning District on real property with an address of 1, 3, and 5 Railroad Street (Tax Map U3, Lot 138, Tax Map U3, Lot 138A, and Tax Map U4, Lot 15) within the M2A and R2 Zoning Districts, as the petition satisfies the 5 part test of the variance statute, pursuant to RSA 674:33.

Second: Wayne Rosa

Discussion: none

Vote: Unanimously Approved 3-0-0

[time on DCAT 1:00:58]

Variance Request #2:

The members had a lengthy conversation and they decided to continue the public hearing until they see further information on hardship.

Action

Motion: James Drago made a motion to continue the public hearing to August 14, 2023 at 7:00 PM in the Town Council Chamber for a variance from CC Railroad Street Newmarket LLC, petitioning the Zoning Board of Adjustment for relief from Section 32-89 *Dimensions Table* of the Municipal Code of the Town of Newmarket to permit a total of 41 residential units with 35 residential units in the M2A Zoning District and 6 residential units in the R2 Zoning District on real property with an address of 1, 3, and 5 Railroad Street (Tax Map U3, Lot 138, Tax Map U3, Lot 138A, and Tax Map U4, Lot 15) within the M2A and R2 Zoning Districts.

Second: Wayne Rosa

Discussion: none

Vote: Unanimously Approved 3-0-0

[time on DCAT 1:20:25]

Variance Request #3:

The members had a lengthy conversation about the viability of the frontage on South Main Street. The frontage is a steep slope topped with a metal road guardrail. The members agreed on the 5 criteria for approval of the variance.

Action

Motion: James Drago made a motion to grant a variance request from CC Railroad Street Newmarket LLC, petitioning the Zoning Board of Adjustment for relief from Section 32-46A(b)(2)e *M2A Permitted Uses* of the Municipal Code of the Town of Newmarket to permit residential units on the first floor of a mixed-use building with frontage on South Main Street in the M2A Zoning District on real property with an address of 1, 3, and 5 Railroad Street (Tax Map U3, Lot 138, Tax Map U3, Lot 138A, and Tax Map U4, Lot 15) within the M2A and R2 Zoning Districts, as the petition satisfies the 5 part test of the variance statute, pursuant to RSA 674:33.

Second: Wayne Rosa

Discussion: none

Vote: Unanimously Approved 3-0-0

[time on DCAT 1:26:02]

Variance Request #4:

The members had a conversation and agreed to continue the public hearing.

Action

Motion: James Drago made a motion to continue the public hearing to August 14, 2023, in the Town Council Chamber, for a variance request from CC Railroad Street Newmarket LLC, petitioning the Zoning Board of Adjustment for relief from Section 32-46A(b)(2)c *Permitted Uses* of the Municipal Code of the Town of Newmarket to permit 62 on-site parking spaces instead of the required 2 on-site parking spaces per residential unit on real property with an address of 1, 3, and 5 Railroad Street (Tax Map U3, Lot 138, Tax May U3, Lot 138A, and Tax May U4, Lot 15) within the M2A and R2 Zoning Districts.

Second: Bob Daigle

Discussion: none

Vote: Unanimously Approved 3-0-0

The Chair asked **Dave** if absent Board members would be allowed to participate at the August 14th meeting. He answered yes as this is a continuation of the public hearing.

4. New/Old Business

[time on DCAT1:28:12]

There was no new/old business this evening.

5. Zoning Administrator's Report

Dave had no report for this meeting.

6. Adjournment

[time on DCAT 1:28:32]

Action

Motion: James Drago moved to adjourn the meeting at 8:26 PM.

Second: Wayne Rosa

Discussion: none

Vote: Unanimously Approved 3-0-0

Respectfully submitted,

Sue Frick

Recording Secretary

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DCAT:
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TOWN OF NEWMARKET NEW HAMPSHIRE

Zoning Board of Adjustment

August 14, 2023 at 7:00 PM

Town Council Chambers

DRAFT MEETING MINUTES

Present: Bob Daigle (Chair), Wayne Rosa (Vice-Chair), David Evans (Zoning Administrator), James Drago, and Al Zink

Absent: Henry Smith (Alternate) and Steven Minutelli

The Chair called the meeting to order at 7:03 PM.

[time on DCAT 6:25]

The four voting members will be: **Bob Daigle, Wayne Rosa, James Drago, and Al Zink**

1. Pledge of Allegiance

2. Acceptance of Minutes

a. July 10, 2023

b. August 7, 2023

Approval of the minutes for July 10 and August 7, 2023 were postponed until the next meeting.

The Chair explained that this meeting is a continuation of the hearing on August 7. He began by reading the notice with the understanding that Variance #1 and #3 were granted on August 7. **Tonight the ZBA will consider Variances #2 and #4.**

3. Regular Business

[time on DCAT 15:03]

Read by the Chair:

a. *There will a continued public hearing on an application for a **Variance (#2)** request from CC Railroad Street Newmarket LLC, petitioning the Zoning Board of Adjustment for relief from Section 32-89 Dimensions Table of the Municipal Code of the Town of Newmarket to permit a total of 41 residential units with 35 residential units in the M2A Zoning District and 6 residential units in the R1 Zoning District on real property with an address of 1, 3, and 5 Railroad Street (Tax Map U3, Lot 138, Tax Map U3, Lot 138A, and Tax Map U4, Lot 15) within the M2A and R2 Zoning Districts and a **Variance (#4)** request from CC Railroad Street Newmarket LLC, petitioning the Zoning Board of Adjustment for relief from Section 32-46A(b)(2)c M2A Permitted Uses of the Municipal*

Code of the Town of Newmarket to permit 62 on-site parking spaces instead of the required 2 on-site parking spaces per residential unit on real property with an address of 1, 3, and 5 Railroad Street (Tax Map U3, Lot 138, Tax Map U3, Lot 138A, and Tax Map U4, Lot 15) within the M2A and R2 Zoning Districts, as the petition satisfies the 5 part test for the variance statute, pursuant to RSA 674:33.

The application is available to view in the Zoning Office at the Newmarket Town Hall during normal business hours.

Attorney Stebbins addressed the Board and mentioned that there was a good discussion at the last meeting about this proposal. This project will provide badly needed housing and will meet many of the goals of the Master Plan and will not add to the tax burden on Newmarket Schools given the size of these apartments. They have distributed financial information to the Chair regarding the chief objection from the ZBA about the size of the project. When they came before the ZBA previously with a smaller project for this site, Invest NH funding would have been required, but they did not receive that funding (\$450,000). So in order to make a project feasible, a new design was necessary. Ben Stebbins, the applicant, explained that there are certain fixed costs: the land, the sight work, the construction costs, and the soft costs per unit (architectural and interior design). He was asked about tax credits by **AI**. There are no tax credits for this development of 41 units as they will be rented at market rates. They have done cost comparisons with apartments in area towns. He anticipates that rents will be approximately \$1,600 for 1-bedrooms (under 600 sq.ft.) and \$1,350 for studios including utilities.

The Chair opened the meeting to public comment at 7:21 PM. [time on DCAT 24:10]

#1 Jon Kiper, 170 Main Street. Jon owns Johnny Boston's and explained the difficulties he has in hiring workers because of the challenges workers have of finding apartments in Town or nearby and parking. His labor is traveling from farther and farther away which adds costs to his payroll and that cost has to be passed on to the customers. It is a vicious cycle. He commented on the 'help wanted' signs in restaurants throughout the Town. He feels that this is an important project and would be a great addition to have in the downtown area.

#2 Sherry Nelson, 10A Railroad Street. She is renting across the street from the proposed parking lot driveway for this project and is very concerned about the head lights, the considerable number of cars and traffic noise, and the children playing in the area. She also asked, if this be completed, would the rents just rocket up to something like \$2,500. The Chair said that the market will determine what the market can bear. He expects that rents will be around what has been discussed. The Chair mentioned that he did some comparison about other units available around Town. Mr. Cheney, for instance, has a 2-bedroom apartment, 825 sq.ft. with rent at \$1,700.

The Chair closed public comment at 7:29 PM. [time on DCAT 31:29]

Variance Request #2:

[time on DCAT 31:46]

The ZBA began a deliberation amongst themselves on the request for Variance #2. There was a lengthy conversation as the members reviewed the 5 criteria required for approval and each member disclosed their thoughts and informally voted on the five criteria for a variance: #1 Public Interest, #2 Observance of the Spirit of the Ordinance, #3 Substantial Justice, #4 Diminishment of Property Values, and #5 Unnecessary Hardship.

Member	Criteria #1	Criteria #2	Criteria #3	Criteria #4	Criteria #5
Al Zink	Aye	Aye	Aye	Aye	Nay
Wayne Rosa	Aye	Aye	Aye	Aye	Aye
Bob Daigle	Aye	Aye	Aye	Aye	Aye
James Drago	Aye	Aye	Aye	Aye	Aye

The Finding of Facts: includes all discussions by the Board members and difficulties with the zoning district effecting this project

Action

Motion: **James Drago** made a motion to grant a variance request from CC Railroad Street Newmarket LLC, petitioning the Zoning Board of Adjustment for relief from **Section 32-89 Dimensions Table** of the Municipal Code of the Town of Newmarket to permit a total of 41 residential units with 35 residential units in the M2A Zoning District and 6 residential units in the R1 Zoning District on real property with an address of 1, 3, and 5 Railroad Street (Tax Map U3, Lot 138, Tax Map U3, Lot 138A, and Tax Map U4, Lot 15) within the M2A and R2 Zoning Districts, as the petition satisfies the 5 part test of the variance statute, pursuant to RSA 674:33.

Second: **Bob Daigle**

Discussion: none

Vote: **Unanimously Approved 4-0-0 by roll call vote**

The Chair wanted to mention something to those who might be watching on DCAT. If you are having difficulties agreeing with decisions made here tonight, please join the ZBA as there are two alternate positions open!

Variance Request #4:

[time on DCAT 1:14:12]

The ZBA began a deliberation amongst themselves on the request for Variance #4. There was a lengthy conversation as the members reviewed the 5 criteria required for approval and each member disclosed their thoughts and informally voted on the five criteria for a variance: #1 Public Interest, #2 Observance of the Spirit of the Ordinance, #3 Substantial Justice, #4 Diminishment of Property Values, and #5 Unnecessary Hardship.

Member	Criteria #1	Criteria #2	Criteria #3	Criteria #4	Criteria #5
Al Zink	Aye	Aye	Aye	Aye	Nay

Wayne Rosa	Aye	Aye	Aye	Aye	Aye
Bob Daigle	Aye	Aye	Aye	Aye	Aye
James Drago	Aye	Aye	Aye	Aye	Aye

Action

Motion: **James Drago** made a motion to grant a variance request from CC Railroad Street Newmarket LLC, petitioning the Zoning Board of Adjustment for relief from Section 32-46A(b)(2)c *M2A Permitted Uses* of the Municipal Code of the Town of Newmarket to permit 62 on-site parking spaces instead of the required 2 on-site parking spaces per residential unit on real property with an address of 1, 3, and 5 Railroad Street (Tax Map U3, Lot 138, Tax Map U3, Lot 138A, and Tax Map U4, Lot 15) within the M2A and R2 Zoning Districts, as the petition satisfies the 5 part test for the variance statute, pursuant to RSA 674:33.

Second: **Bob Daigle**

Friendly Amendment to the Motion: **Wayne Rosa** would like **Dave Evans** to express the ZBA member concerns to the Planning Board about the traffic impact of this many cars turning onto South Main Street from Railroad Street.

Second: **Bob Daigle**

Discussion: none

Vote: **Unanimously Approved 4-0-0**

Further Discussion: none

Vote on the Motion as Amended: **Approved 3-1-0** (**Al Zink** voted nay)

Both Attorney Stebbins and Ben Stebbins thanked the ZBA for their time and consideration. The Chair stated that, if anyone listening to the meeting has any issues with granting of these variances, they would have 30 days to appeal to the ZBA for a rehearing. If that fails, they may then appeal to the Superior Court.

<https://www.newmarketnh.gov/zoning-board-of-adjustment>

6. Adjournment

[time on DCAT 1:27:46]

Action

Motion: **Al Zink** moved to adjourn the meeting at 8:25 PM.

Second: **James Drago**

Discussion: none

Vote: **Unanimously Approved 4-0-0**

Respectfully submitted,

Sue Frick

Recording Secretary

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DCAT:

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