



TOWN OF NEWMARKET NEW HAMPSHIRE

Zoning Board of Adjustment

December 18, 2023 7:00 PM

Town Council Chambers

DRAFT MEETING MINUTES

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

Absent: James Drago, Steven Minutelli, and Henry Smith (Alternate)

The Chair called the meeting to order at 7:02 PM.

[time on DCAT 4:36]

The three voting members this evening will be: **Bob Daigle, Wayne Rosa,**
and **Al Zink.**

#1. Pledge of Allegiance

#2. Acceptance of Minutes

[time on DCAT 4:56]

a. November 27, 2023

Action

Motion: **Al Zink** moved to approve the Draft Minutes of November 27, 2023 as written.

Second: **Wayne Rosa**

Discussion: none

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

The Chair stated that a full board is constituted by five members, but three members forms a quorum. If the applicant agrees to continue with three members and not a full board, all three members must vote in the affirmative to approve the request.

Mr. Veader agreed to proceed with three voting members this evening.

#3. Regular Business

[time on DCAT 6:42]

Read by the Chair:

a. There will be a continuation of a public hearing for an application for a Variance, reference Section 32-89 of the Newmarket Zoning Ordinance, Dimensions Table, to permit an additional dwelling unit in a development that already has the maximum number of dwelling units allowed, requested by Lee Veader, at 104 Kent Place, Tax Map U3, Lot 145, M2 District.

Mr. Lee Veader rose to present his request for the above variance. He read prepared responses to the criteria for requesting the variance to permit an additional dwelling unit in a development that already has the maximum number of dwelling units allowed. His remarks focused around the central contention that he should be allowed to make this change because of the unique conditions of the property at 104 Kent Place.

The Chair opened the meeting to public comment at 7:29 PM. [time on DCAT 31:14]

The Chair asked that public comment be remain open for 15 minutes (until 7:45 PM) and then close automatically. If someone from the public does come in later to speak, then the comment would be opened again to accommodate them.

Dave said that he had not received any correspondence regarding this request and confirmed that all abutters were identified.

The Chair said that he did not understand the 'hardship' with respect to this property. **Al** asked Mr. Veader to detail what changes he wanted to make to the unit. He wishes to turn the downstairs into his business show room and use the two-car garage for deliveries. For the upstairs, he plans 3 bedrooms plus 1 room for an office, with a bath and kitchen. Downstairs would be the show room, conference room, and a half-bath and access to the attached garage. He wishes to live upstairs with his wife and move his business show room from 501 Kent Place. His business is a kitchen design company named Benchmark Home Improvement. As the members discussed, the units in this building were set up to look and feel like a dwelling, but were originally approved as commercial space. Mr. Veader does not plan to make any changes other than cosmetic. As the Chair explained, Mr. Veader does not mention the unique aspects for hardship. Since this is already a 'residential unit' by design, the applicant is not asking to remodel commercial space into residential. The 'hardship' issue would be the cost of conversion back into a commercial unit only.

The Chair closed public comment at 7:45 PM.

Bob wrote the following after lengthy discussion with the applicant, members and **Dave**: "As the written testimony does not present evidence of a hardship and while the unit is already a residential unit (evidence from the verbal testimony), the applicant is, therefore, asking to make his unit 'legal' by increasing the residential density at 104 Kent Place, Tax Map U3, Lot 145, M2 District, by 1 residential unit.

Action

Motion: **Bob Daigle** moved that, as there is no dissenting testimony, the Zoning Board of Adjustment hereby grant the variance. Finding of Fact: the unit currently has 3 bedrooms, 1 kitchen, 1 office, and a 2 car attached garage with commercial space below.

Second: **Wayne Rosa**

Discussion: none

Vote: Unanimously Approved by Roll Call 3-0-0

Dave asked Mr. Veader to come by the office tomorrow morning and he agreed.

#4. New/Old Business

Nothing to consider the evening.

#5. Zoning Administrator's Report

[time on DCAT 1:03:55]

a. Regularly Scheduled Meetings

Dave would like to schedule meetings on the second Monday of each month, rather than trying to set meetings as requests come into the office. The members were in agreement that regular meetings would be fine. **Dave** will work on transitioning the meetings to a regular schedule of the second Monday of every month and the deadlines for applications. The next meeting will be January 8, 2024.

b. Expansion of a Non-Conforming Structure

Dave asked the members what they thought of moving expansion of a non-conforming structure out of a 'special exception' and making it an 'administrative process' by the Zoning Administrator (still require the applicant to meet the standards). **Dave** gave an example for their consideration by using 98 Main Street. The members pointed out that the abutters would not be notified or have a say. The members agreed that the twelve regularly scheduled meetings would be sufficient and that the expansion of non-conforming structure requires deliberation by the Board.

#6. Adjournment

[time on DCAT 1:13:10]

Action

Motion: Al Zink moved to adjourn the meeting at 8:12 PM.

Second: Bob Daigle

Discussion: none

Vote: 3-0-0

Respectfully submitted,

Sue Frick

Recording Secretary

DCAT:

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



TOWN OF NEWMARKET NEW HAMPSHIRE

Zoning Board of Adjustment

January 8, 2024 PM

Town Council Chambers

DRAFT MEETING MINUTES

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

Absent: Bob Daigle (Chair)

The Vice-Chair called the meeting to order at 7:01 PM.

[time on DCAT 2:16]

The Vice-Chair appointed Alternate Henry Smith to be a voting member this evening.

The five voting members will be: **Wayne Rosa, James Drago, Steven Minutelli, Henry Smith**, and **Al Zink**.

#1. Pledge of Allegiance

#2. Acceptance of Minutes

There were no minutes this evening.

#3. Regular Business

Read by the Vice-Chair:

[time on DCAT 3:51]

a. Variance request from Section 32-88 Structure Height and Section 32-89 Dimensions Table from Michael & Brittany Erlenbach to permit the construction of a 2-story home with a walkout basement that will exceed the maximum height of 35' allowed, by 2'9". The lot is located at 21 Hamel Farm Drive, Tax Map R4, Lot 42-11, in the R1 District.

Mark Filion was speaking on behalf of the applicants. He briefly read the criteria rebuttal asking for the variance as described in the application. He specifically pointed out the characteristics of the lot. As designed, the house would be built the same as other homes in the development and the walk-out basement would be appropriate for this design. Additional fill would be required in the backyard if the walk-out basement were deleted from the plan.

The Chair opened the meeting to public comment at 7:08 PM

[time on DCAT 10:09]

Dave reported that he had not received any communications regarding this matter and all the abutters were notified.

Henry and Al both asked questions about the hardship criteria. Mr. Filion felt that the character of the colonial home would be diminished by the pitch of the roof i.e. it would not be an ideal standard for snow loads. Al asked again what was unique about the property. Mr. Filion responded that the land was the hardship as it slopes down in the backyard toward the Piscassic River and the septic must be placed in the front yard where there is space and the fill may be used.

Sandra Erlenback rose to speak to the members. She stated that the proposed pitch of the roof and the walk-out basement would be identical to all the homes in the neighborhood and as they all exceed the limit.

The Chair closed public comment at 7:45 PM.

Action

Motion: James Drago moved to grant a variance request from Michael Erlenbach, petitioning the Zoning Board of Adjustment for relief from Section 32-89 *Dimensions Table* of the Municipal Code of the Town of Newmarket, New Hampshire to permit the single family home to exceed the maximum structure height by 2 feet 9 inches on real property with an address of 21 Hamel Farm Drive (Tax Map R4, Lot 42-11) within the R1 zoning district, as the petition satisfies the 5 part test of the variance statute, pursuant to RSA 674:33.

Second: Al Zink

Discussion: none

Vote: Approved 5-0-0

Dave asked the applicant to come to his office in the morning so that he could issue the permit and they agreed to do so.

Read by the Vice-Chair:

[time on DCAT 22:40]

b. Equitable waiver of dimensional requirements requested by Chinburg Development, LLC. 16 duplex building (32 units) on Green Road are 40' 7" in height, which is taller than the allowed 35' in Section 32-89 Dimensions Table, of the Newmarket Zoning Ordinance. The properties are located at Stonehill Point at Hersey Green, i.e. Green Road, Tax Map R5, Lot 132, in the R2 District.

Shawna Sammis, Assistant Land Development Manager for Chinburg Development LLC, rose to speak on behalf of the applicant who is completing the build out of Stonehill Point at Hersey Green. She is seeking an equitable waiver of dimensional requirements on what could best be described as and 'administrative oversight'. They were unaware that the floor plan chosen exceeded the dimensions table. All the building permits have been granted. The project was approved in the 80's, but they did not begin building it out until 3+ yrs ago - 38 total units including 32 duplex units in 16 buildings on Green Road. They are all in the Hersey Green HOA. The Chair wanted clarification, Dave further clarified: most have occupancy now, 3 duplexes are currently under construction and one of these 3 is very near completion and final inspection. 2 others

1 have all the framing, electrical and plumbing completed. Footings have been poured for
2 the last duplex.

3
4 The Chair opened the meeting to public comment at 7:29 PM. [time on DCAT 28:58]

5 **James Drago** recused himself from the discussion and vote.

6
7 The Chair asked Ms. Sammis if or how this error could be corrected. She believes that
8 the cost would be prohibitive and that the vast majority of the units are occupied. That is
9 why the equitable waiver is being requested.

10 **Public Comment:**

11 **#1 Charles Souza, 11 Green Road.** He was here this evening representing the Hersey
12 Green HOA (the original 10 homes built on Green Road before Chinburg extended
13 Green Road). He wants an investigation into how they got building permits: who signed
14 the permits, who did the inspections and 'never noticed' that they were 5' over the
15 required 35'. He felt very strongly about town staff responsibility for this oversight.
16 Chinburg blasted granite ledge and created dust and dirt for years during this
17 construction. The HOA is planning to separate from the other units and will not insure
18 them.

19 **#2 Ken Strathie, 9 Green Road.** He distributed pictures for the members. He has lived
20 there for 4 ½ yrs. He said that a buffer was promised to them by Chinburg, but that did
21 not materialize. They also were never notified as abutters during the approval process
22 with the PB. Chinburg came to the HOA residents to get their permission to approve a
23 five year extension to build – not any approval of height change. The pictures shown to
24 them were the architectural renditions of what they would have looked like with only 2
25 stories and with the buffers as proposed. The picture in color was taken this afternoon –
26 no buffer at all – the project manager did a clear cut. He said that they obviously cannot
27 tear them down now, but he really wanted to know where was the oversight and what is
28 the Planning Board process. **Dave** described the process of the third party engineer
29 during inspection. He would like to see Chinburg repair some of the issues in the
30 neighborhood caused by their construction – paving, sidewalk repair. Chinburg comes to
31 them for approvals, but just goes in and does what he wants. He would like to see
32 Chinburg penalized.

33 **#3 Charles Souza, 11 Green Road.** He just thinks that the Town needs to do a better
34 job with approving and permitting projects.

35 **#4 Tyler Grant, 26 Green Road.** He has lived in his townhome for 1 year. He would
36 not like to undergo construction to reduce the height of his home. He is sorry about the
37 buffer and certainly understands the frustration of the neighbors.

38 **#5 Joe Montague, 28 Green Road.** He, too, is sorry about the buffer and frustrations
39 with Chinburg. He does not want the expense or burden of modifying his home.

40 **#6 Charles Souza, 11 Green Road.** He rose again to explain that he does not want the
41 buildings lowered, but he is very upset with the process. **Steve** said that the ZBA is a
42 board of limited statutory authority.

43 **#7 Ken Strathie, 9 Green Road.** He rose to ask if the ZBA has something other than
44 approval of disapproval which they can do. He would like an explanation about why the

homeowners need to do all the work in achieving a remedy. He does not want the ZBA to make a decision this evening, so that they have an opportunity to speak with counsel.

The Chair closed public comment at 7:57 PM.

[time on DCAT 58:23]

Action

Motion: Henry Smith moved to continue the public hearing to February 12, 2024, at 7:00 PM in the Town Council Chambers for an Equitable Waiver of Dimensional Requirements pursuant to RSA 674:33-a from Chinburg Development LLC for the non-conforming structures located on Green Road (Tax Map R5 Lot 132) within the R2 zoning district.

Second: Al Zink

Discussion: none

Vote: Approved 4-0-1 (James Drago abstained)

Dave will follow up on the concerns raised during discussion.

#4. New/Old Business

[time on DCAT 1:00:56]

a. Meeting Proposal

As discussed at the previous meeting, the members wished to change the periodicity of the Zoning Board of Adjustment meetings from an as-needed basis to once per month.

Action

Motion: Al Zink moved to solidify the calendar as presented by the Zoning Administrator to change the ZBA meetings from an as-needed basis to the second Monday once per month and to publish the application deadlines based on those dates.

Second: Steven Minutelli

Discussion: none

Vote: 5-0-0

#5 Adjournment

[time on DCAT 1:02:02]

Action

Motion: Al Zink moved to adjourn the meeting at 8:00 PM.

Second: Steven Minutelli

Discussion: none

Vote: 5-0-0

Respectfully submitted,

Sue Frick

Recording Secretary

DCAT:

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

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