

# Approved: December 17, 2015

Town of New Castle Zoning Board of Adjustment  
September 24, 2015  
7:00 PM

**Public Hearing: Case #2015-05 filed by Michael & Laura Rubin, owner of 22 Locke Road (Tax Map 11-9). Applicant requests a variance for Storage Shed setback per Table 1 R-1, Section 4.0**

**Members Present:** Chair Todd Baker, Russell Cox, Mark Gardner, John Fitzpatrick, Margaret Sofio

**Members Not Present:** Rebecca Goldberg

**Others Present:** Michael and Laura Rubin, Bruce Street, Dennis Dinmore, Brittney Dudley

Chair Baker called the September 24, 2015 meeting of the New Castle Zoning Board of Adjustment to order at 7:01 pm.

**1. Public Hearing:** Chair Baker opened the Public Hearing

**A. Case #2015-05 filed by Michael & Laura Rubin, owner of 22 Locke Road (Tax Map 11-9). Applicant requests a variance for Storage Shed setback per Table 1 R-1, Section 4.0**

Mr. Rubin explained that they moved into the property at 22 Locke Road in 2010 and remodeled in 2012. He said when they added a shed they did not request a building permit because they thought one was not needed since the shed was placed on cinder blocks. Mr. Rubin said before erecting the shed he spoke with the neighbor's whose setback the shed is within (the Dinsmore's) to ensure they were okay with the location of the shed. He said they remain fine with the location of the shed. Mr. Rubin said he went through the five criteria in the letter he submitted to the ZBA.

Mr. Rubin said the shed does not reduce property values. He noted that due to a substantial amount of ledge and severe slopes on the property there was no buildable space on the back of the property. He said they placed the shed in the front in the most logical location and noted that the only other flat space for building would be adjacent to the house on the left and would be more visible. Mr. Rubin also noted that since their house does not have a basement or attic the storage shed is necessary for storage space. He noted that they lost storage space in their garage when their utilities were relocated to the garage. Mr. Rubin noted that the placement of the shed does not cause harm to any of the neighbors and that it is not contrary to the spirit of the ordinance.

Margaret Sofio noted that the neighbor at 1230 did not file in support of the shed. She asked if they opposed to the shed.

Mr. Rubin said he spoke with them and they indicated that they did not wish to sign the form in support of the shed.

Russell Cox asked who installed the shed that did not know it required a setback.

Mr. Rubin said that the Home Depot installed the shed and they relied on him regarding the setback. He said he made a mistake.

Chair Baker asked if there was anyone from the public that wished to provide comment.

Bruce Street of 67 Locke Road said that he and his wife Lisa live across the street. He noted that common sense suggests the shed should stay where it is. He said they are in support of the location of the shed and noted that the closest abutter has no issue with the location of the shed.

Dennis Dinsmore said he is the closest abutter and he has no issue with the shed being placed where it is.

There being no further public comment, Chair Baker closed the public hearing.

Russell Cox said that the lack of knowledge of regulations is not a reason for a variance. He noted it appears that the shed is necessary since there is not a basement. He said he walked the property and thinks the shed is in the best location and said if the owners had come to the ZBA for a variance before it was built he would have granted it. Mr. Cox said the property is unique and there is no visibility of the shed. He noted that the view of the shed disturbs only Mr. Rubin's property and not the abutters.

Margaret Sofio said she is sympathetic to the limited spaces on the property to build the shed and noted that side setbacks can be important for safety concerns.

Mr. Cox agreed and noted that was one of the reasons he felt the shed should be located where it currently is.

Ms. Sofio said she is sympathetic to the fact that there are few places to site the shed, that the shed is needed and that the property owners worked with the neighbors to mitigate any concerns.

John Fitzgerald noted that Mr. Rubin did a good job of presenting the case in an organized way, provided supporting documentation and stated that there were no objections from neighbors. He said he has no issue providing the variance.

Mark Gardner said Mr. Rubin made a well-reasoned presentation and he has no issue with voting in favor of the variance.

*John Fitzpatrick MOVED to approve the application for a variance as presented for 22 Locke Road: this was SECONDED by Mark Gardner and APPROVED unanimously.*

Chair Baker said he will provide the building inspector a notice of the variance within a few days.

## 2. Approve minutes of meeting held on August 27, 2015

Russell Cox MOVED to approve the minutes of the August 27, 2015 New Castle Zoning Board of Adjustment meeting; this was SECONDED by John Fitzgerald and APPROVED unanimously.\*

\* Mark Gardner abstained as he was not present at the August 27, 2015 meeting.

## 3. Old Business

Chair Baker noted that the ZBA is looking for an additional alternate (Mark Gardner is the only current alternate). He noted that the select board nominates members for the ZBA and said if the members know of someone interested they can forward the name to the Select Board.

Russell Cox raised the issue of enforcement for special conditions set by the ZBA on a variance. He said he has the impression that the follow-up on the conditions imposed on variances is marginal at best. Mr. Cox said that many of the conditions the ZBA puts on variances are important to the decisions.

Chair Baker said that when the board votes on a motion he sends a notice of determination to the Select Board and to the Building Inspector and it notes any conditions in it. He said the building inspector is

charged with ensuring those conditions are fulfilled prior to providing a certificate. Chair Baker said if there is an issue with that the ZBA needs to check up on that.

Mr. Cox agreed that is the process but suggested there may be issues with the enforcement by the Building Inspector.

Mr. Gardner said it is up to the Select Board to enforce the conditions set. He said if the ZBA feels conditions are not being adhered to a letter should be sent to the Select Board.

Mr. Cox suggested making the variance conditional upon specific conditions occurring first.

Chair Baker said if the ZBA gives approval for a variance with conditions; the board needs to trust they will be enforced and if the board believes they will not be, the variance should be tabled until such conditions occur.

Mr. Cox discussed a specific instance of a garage being used for living area (which is against Town regulations) and that property is now for sale. Mr. Cox said he is concerned that the property will be listed with the garage as living area.

Chair Baker noted that the ZBA did not provide a variance, so it is not an issue of our conditions not being followed, it is a zoning issue. He said the Code Enforcement Officer should be involved. He noted that Mr. Cox could make a complaint to the Code Enforcement Officer and he would have to review it.

Ms. Sofio noted that the Board of Selectmen do not do inspections; they rely on building inspector.

Mr. Gardner said the suggestion of making variances conditional is a possibility and could be investigated further.

4. Other business to come before the Board

There was no Other Business discussed at this meeting.

5. Set date of next meeting October 15, 2015

6. Adjournment

*Russell Cox MOVED to adjourn the September 24, 2015 meeting of the New Castle Zoning Board at 7:36 pm; this was SECONDED by Margaret Sofio and APPROVED unanimously.*

Respectfully submitted by,

Susan Lucius, Secretary to the New Castle Zoning Board of Adjustment