

**Town of New Castle  
Zoning Board of Adjustment  
Meeting Minutes Aug 18, 2016**

Chair Todd Baker opened the meeting and called the first case. ZBA members in attendance were: Chair Baker, Russell Cox, Margaret Sofio, John Fitzpatrick, Mark Gardner.

**Case # 2016-03**, filed by Last House LLC, the owners of 120 Wild Rose Lane, Map 3, Lot 8B.

Applicant's attorney, Mr. Tom Keene addressed the board and explained his client's request to reconsider the Board's decision to deny Last House LLC's application for a variance.

Mr. Keene commented on his client's request for a rehearing as he believes that granting a variance and allowing for a driveway to access the new lot and leaving the existing lot access by the right of way may make the most sense. He believes their request is a for reasonable use, and that it should be a permitted use to create two lots. He believes his client meets all five criteria necessary to grant the variance. And, since some of the information presented is new evidence that he thinks there should be a rehearing.

Chair Baker read a letter from the town's attorney with instruction on how the board should consider a request for a rehearing as follows:

When a ZBA considers a motion for rehearing, the standard applied is whether the applicant has demonstrated that the board has either committed an error in its legal analysis, i.e. used incorrect criteria for a variance, etc. or missed relevant evidence. Any new evidence that the person filing the motion may have that is relevant to the matter may be used as grounds for granting the rehearing. The ZBA's discussion decision on whether to grant the motion for hearing may be done during a public meeting and does not require a hearing.

Chair Baker commented that the application was denied due to the failure to meet the following criteria, and *one* is granting the variance would not result in the diminution of value of the surrounding properties and *two* denial of the variance would be an unnecessary hardship to the owner. So as Mr. Keene also mentioned that ZBA members did spend considerable time with the Planning Board and others too, in researching a request to consider other options. It appears that the Planning Board would have an option to create their requested split without a variance but it would be more costly to the applicant.

Ms. Margaret Sofio commented that the choice was between the applicants proceeding to build a private way which is a possibility but that option required a variance that would have less impact on the land, so she is undecided.

Chair Baker shared a letter from an abutter dated June 2, 2016 as follows:

“Regarding the motion for variance for the Last House LLC I have a few questions and observations. I have heard that the construction of a private road would satisfy frontage

requirements and would not need ZBA approval. I can find no such rule in the Zoning Ordinance.

What I do find under definitions for a subdivision regulation page Sub 3, Section 3.19, is that the installation of a new road, public or private, changes a minor subdivision to a standard subdivision. And under Zoning Ordinance page Z33, 6.1.64, the frontage requirement of 200 feet on a town road exists. It seems to me that these two, definition and ordinance, are meant to negate the use of a private road to circumvent the frontage requirements which may have been used in the past.

The letter for rehearing makes no mention of how the frontage issue for Lot B is to be resolved. Both entrances, drive and road, are in the 50-foot waterfront buffer zone and much in the 100-foot natural woodland buffer zone and would require consultation with the Conservation Commission. Permits from DES. Being new in town I am not sure if it is proper for us to speak directly. If it is, could you let me know at this telephone number, and we might meet at your convenience. Thanks for your consideration”

Chair Baker said he never met with the abutter and never spoke with him directly about this letter.

Mr. Russell Cox commented that we have seen before us what is the most practical solution, which is to take the existing right of way and make a public road out of it to serve the three lots that are involved.

Chair Baker: Well, remember what we have to decide are two things: (1) Did we commit an error in our legal analysis or (2) did we miss relevant evidence? If we believe that we did make an error, or we missed relevant evidence, then it would be appropriate to grant a rehearing, and if we didn't, then we shouldn't.

Mr. Mark Gardner: While I have some serious reservations about this application. The points that were brought to our attention by the abutter in terms of the relationship between a minor subdivision and a major subdivision and a requirement for more than 100 feet of frontage or 200 feet of frontage really throws this case amuck. And that needs to be addressed. And I think we should hear something on that. So for the limited purposes of hearing arguments on a rehearing basis, I don't object to it. But it would be nice to have that as you addressed.

Chair Baker: Well, I guess the question is with that influence, our decision to grant the variance or not.

Mr. Gardner: I don't know if there is a way around it. It might create a further hardship. Arguably. And whether we deem it to be a hardship is another question. It's out there.

Ms. Sofio: I think part of that issue is whether there is an alternative we were told they would exercise that alternative as a (brite) before this issue as a minor subdivision was raised. In that

case, granting a variance, it is a less invasive ... it just makes more sense. Or Mr. Cox's solution, which would be a very difficult place to get to I think.

Chair Baker: I did pass this letter on to the Chair of the Planning Board. She didn't believe that that argument was as restrictive as the abutter believed, but that would be something for the Planning Board { } to decide.

Mr. Gardner: But it affects the hardship argument.

Chair Baker: My thought was that if there is a way for them to achieve their objective, without a variance which has certain legal criteria, they should pursue that, rather than asking for a variance. Especially considering that we do have strong reservations from the abutter, and how that will affect his property values certainly is debatable.

Mr. Gardner: Maybe the applicant would table the petition and explore alternatives before proceeding with this.

...

Chair Baker to Mr. Keene: Do you understand where we are coming from?

Mr. Keene commented that he would be willing to table his request for a rehearing in order to proceed with the Planning Board.

Chair Baker: I make a motion that we table this matter for a period of sixty days to permit the applicant to go before the Planning Board to see if they can come up with a viable alternative as opposed to seeking a variance.

Mr. Cox: I second that.

Chair Baker: We have a motion. All in favor? The motion passed unanimously.

**Case # 2016-5** Chair Baker called the next case # 2016-5, filed by Doug and Dan LLC, 3 Walbach Street, Map 18, Lot 56, for a special exception to permit the use of an inn in the mixed use district. Abutters have been notified and fees have been paid.

Applicant's architect, Ms. Sarah Hourihane presented the application for a special exception to allow the use of a bed and breakfast in the mixed use district. Per section 4.1.6.2, a bed and breakfast is allowed within this district with a special exception from the ZBA as well as a Planning Board review.

Ms. Hourihane: We are on the agenda next week for the Planning Board for their site review. Just to introduce you to the property I'm sure many of you are familiar with it directly across the street right next to Henry's is a lot that is about 6700 sq. ft. There is an existing two and a half story wood frame building that is currently used as a three-unit multi-family rental apartment. There are two two-bedroom units and then one one bedroom unit. We are requesting to convert

this building into a bed and breakfast that would be five rooms so the number of rooms wouldn't change, just the number of units would change.

Just to get you familiar with the lot a little bit behind this building, there is a yard space that goes all the way down to Piscataqua, and that is all part of this property here.

Chair Baker: So is this property owned by the applicants? Or are they in contract now with...

Ms. Hourihane: They are in contract.....This is part of due diligence....

So our intent tonight is to get a special exception to be able to move forward we know that there are several other boards we need to go forward with in developing this property starting with whether or not it can be used for the [purpose we are seeking]. [Developer uses a chart. Most attendees have a packet with matching text, images and maps.] This is the existing survey of the property the existing house is here. This is Main Street, Town Hall is currently here Walbach and then Piscataqua Street is here and so they run all the way down to that point. So as part of proving according to Section 422 22, the general requirement for the special exception we have layered on parking to accommodate the number of spots that's required in the zoning ordinance for this use.

The hotel use is the closest to what we are looking to do here, even though it would be an inn, not a formal hotel. There wouldn't be a restaurant or other activities happening on site. It would just be the users of the building that would be staying here. We did go ahead to show at least that we can meet what is already laid out in the ordinance: two spots or three spots for two units so that works out to about 7 and a half spots for a five room inn. So we are showing eight spots. All eight spots meet the requirements set out in the site plan review regulation and we also have an ADA space and that meets the NH ADA guidelines. Currently on the lot there are about three to four gravel parking spaces that back out onto Walbach Street, so what our proposal would do is create an island so there is one point of entry, no one is backing out onto Walbach Street, there is area to turn around and really ease traffic in this area. In addition to that we would also be bringing the building up to code bringing in a ramp and we would also rebuild the fire stair on the side that that we would come back to detail at a later date, but that is part of the plan.

So if we just go through the ten requirements that are set out in the section driveways, parking in accordance with the subdivision ... We have gone through that document and all of our parking spots do meet the off-street parking requirements as well as the dimensions laid out for the parking and we also have a 22-foot drive aisle for both directions that would get us in and out from Walbach Street. We have also incorporated planted buffers along the perimeter of the property, paying special attention to add as cars pull in and headlights are shining at night and here as well as along this corner and various other areas that could be problematic at night, for the abutters, paying special attention to that. We have also arranged the parking spaces such that they do not back out onto the public street, as stated previously.

Number two is proposed use is so designed and operated so that the public health, safety, welfare and convenience will be protected. We believe that the change in use from the three unit, five

bedroom apartment to a five room inn will not be detrimental to the public health, safety, welfare and convenience. The building is an existing structure that will be renovated. The renovations will bring the building up to code. And the life safety standards [will be] improving the health and welfare of the surrounding property. The proposed inn would be owned and operated by New Castle residents that live right down the street on Walbach Street, within viewing distance of the property.

Number three, the use will be compatible with the ... development and proposed character of the zone. The existing building was built in 1820 and the proposed inn would restore this building potentially even looking at registering it with the National Park Service. The intent is that we would maintain the character of this property and restore that to be what it was before and with it being located directly across from the Town Hall, and right next to Henry's Market we believe that this would enhance the vibrancy of Main Street and support the businesses as well. And we know that the use of a bed-and-breakfast is not foreign to this district so we hope that this would be a nice addition to bring that back.

Number four is landscaping treatment appropriate for the character of the area as well as careful design and surface .... Maximum compensation use. Again, we would use landscaping that is in keeping with the character of the area and what plans will be determined ... we would be very mindful of that and again would have our planted buffers and walkways that would lead everyone to the main planned entry.

Number five is adequate off-street parking and loading shall be provided and ingress and egress as designed will cause minimum interference with traffic on abutting streets. Again we are taking what is existing as a 3 to 4 parking area that backed out directly onto Walbach and providing parking so that there is one entrance, one exit which is in keeping with the site plan review regulations and it is also meeting the zoning requirements for off-street parking for hotel use.

Number six, the applicant for special exception agrees as a condition of this special exception to obtain Planning Board approval of the site plan prior to applying for a building permit. Again, we are on the Planning Board agenda for next week. We will be reviewing this and will be meeting with them on August 24.

Number seven, the granting of special exceptions will not adversely affect abutting or nearby property values. We believe that this will be considered amenities to many residents, especially for guests that may be coming from out of town and have them stay here and again with the careful screening of landscaping and the historic renovation of the building we feel that this will only improve property values surrounding and really sprucing up this lot and making it a nice amenity for the town.

I believe that's all the general requirements. Doug is here tonight, if you would like to hear more about what his business plan is for this inn and how they plan on running it. If that's of interest or if you have any questions.

Mr. Doug Palardy: Hi, I am Doug Palardy, and Dan is here as well. On the application I did submit a letter to this board which does kind of do a brief overview of our plans. So in hopes that your having read that, you'll kind of get an idea of what we intend to do here and our history of having renovated two historic building properties in Portsmouth in the last eight years when we opened the Ale House Inn and the Hotel Portsmouth which were both registered historic buildings that we went through the process in Portsmouth, so we do have a track record and a history there. Now that we are living in New Castle full-time, and we see this building directly out the window from our living room and bedroom I think there is a precedent for what we have done and we hope that you would be open to seeing this building get brought back to life. It does need some attention and we are willing to go to those lengths to bring it back to what it once was before it was covered in metal. There are just some parts that need some TLC as most of you are familiar with. But I am open for questions, if you have any.

Chair Baker: Can you tell us about what restorations that you would see?

Mr. Palardy: Removing the aluminum siding would be number one. And I am not exactly sure of the condition of the wood siding that is underneath it but we would return that to wood and have it painted with historic color. We would replace the windows which all need to be replaced, and we would choose and get approval on a historic window that would meet HDC requirements. And the wood trim that is on the side of the building facing Walbach Street we would fix that up, I guess you would say. Part of it is rotten so we wouldn't want to remove the wood-carved cornices ...so we are not intending to add on to this building, so really visually...

Chair Baker: Same footprint?

Mr. Palardy: Same footprint, same square footage. Exactly.

Chair Baker then opened the meeting to comments from the public.

Mr. Andrew Moore, abutter to the applicant, spoke in favor of the application, but commented that the parking lot should be considered carefully. Chair Baker commented that the Planning Board will address such issues during site plan review.

Mr. Leonard Seagrin of 19 Walbach Street and abutter to the Property said the applicants have done good work so far, but he is neither supporting nor opposing the application.

Mr. David Borden of 40 Walbach Street spoke in favor of the application as there is a need for the applicant's use, the applicants have a good reputation for restoring old buildings and operating hospitality facilities. Together, he believes the application will support the need for a cross walk across Main Street.

Ms. Holly Biddle, abutter to the Property, of 7 Piscataqua, spoke in favor of the application for the removal of a fire hazard and the improvement of the property.

Chair Baker then closed the public session. Mr. Gardner commented that he believes the applicants have met the criteria for the special exception, subject to the approval of the Planning Board and other required approvals. Ms. Sofio commented that she is satisfied with the response from the neighborhood and the application in general. Mr. Cox commented that the facility must meet all fire and safety issues be adequately covered.

Mr. Cox moved that the special exception for the use of an Inn be granted subject to full sprinkler system and approvals from the fire department and/or fire marshall, and approval from required New Castle boards. This approval does not relate to any setback violations.

Mr. Gardner seconded the motion. The motion was unanimously approved by the Board.

Chair Baker adjourned the meeting.