

NEW CASTLE BOARD OF ADJUSTMENT

APRIL 21, 2016 – 7PM

Board Members Present: Todd Baker, Chair, Russell Cox, Rebecca Goldberg, John Fitzpatrick, and Mark Gardner

Board Members Absent: Margaret Sofio

Case # 2016-03 filed by Last House, LLC, owners of 120 Wild Rose Lane, Map 3, Lot 8B (the “applicant”)

Guests: Attorney Tom Keene, John Chagnon of Ambit Engineering, Tom Smith, Ken White, Tony Jalbert of Tate and Foss, Margie Heindel

Chair Baker opened the meeting at 7:06 pm and indicated that the applicant had filed all required documents and that all requisite notices had been sent out. The Chair noted that in connection with a proposed subdivision the applicant was requesting relief from the requirement that lots have 100 feet of frontage (Article 4, Section 4.2, Table 1 – Low Density Residential District R-3).

Before proceeding with the presentation of the case, Mark Gardner disclosed that his employer, Pease Development Authority (PDA) had a limited professional relationship with Attorney Keene who prepares closing documentation for a Revolving Loan Fund administered by PDA for the benefit of the local fishing industry. Mr. Gardner represented that he felt he could judge the merits of the case on an impartial basis and Attorney Keene agreed. There were no objections from the members of the ZBA or public in attendance.

Attorney Keene of Keene and McDonald, PA began the proceedings by giving a general outline of the relief requested and introduced John Chagnon of Ambit Engineering. Referencing a Plan of Land dated 2/29/16 entitled “Concept 1, Frontage Variance”, Mr. Chagnon gave an overview of the property and described the plan to subdivide the 6.83 parcel of land into two lots, with a Lot A containing 2.86 acres with 100 feet of frontage and Lot B with 3.97 acres of land with 41.97 feet of frontage. Mr. Chagnon also pointed out that access to the applicant’s house on proposed Lot B would not be via the 41.97 feet of frontage but continue via an access easement on abutting property owned by a Mr. and Mrs. Maloney.

Attorney Keene began his presentation by stressing that the relief requested from the 100 foot frontage requirement met all of the criteria for a variance and referenced his memorandum dated March 24, 2016 which was submitted in conjunction with the application. Attorney Keene emphasized the fact that the need for 100 feet of frontage for Lot B was not necessary as the applicant had never accessed the property over the existing 6.83 parcel but rather via the access easement on the adjoining property of Mr. and Mrs. Maloney. Mark Gardner inquired as to whether the access easement was in perpetuity and ran with the land. Attorney Keene indicated that he thought so and conferred with the applicant and reviewed the deed which granted the easement. As Attorney Keene was unable to give a definitive answer to Mark Gardner’s inquiry he indicated that he could render an opinion and would not object to a variance being granted subject to such confirmation and opinion.

Attorney Keene continued his presentation by introducing Tony Jalbert of Tate and Foss Realtors. Attorney Keene represented that Mr. Jalbert would opine that the subdivision of the property would not diminish the value of surrounding properties but would in fact enhance it. It was also noted by Attorney Keene that Mr. Jalbert would be marketing the property if the variance were to be granted.

Rebecca Goldberg inquired about the effect of the subdivision on the access easement to which Attorney Keene responded that there would be none.

Attorney Keene proceeded with his presentation and addressed the criteria for the granting of a variance. Relying on the opinion of Mr. Jalbert, Attorney Keene argued that there would be no diminution of property values. Arguing that granting the variance would be in the public interest and not contrary to the spirit of the ordinance, Attorney Keene related that a new house on Lot A would meet all the requirements for both density and frontage requirements of the Zoning Ordinance as well as be state of the art and meet all safety concerns and current building codes. With respect to Lot B, it was emphasized that it would meet all density requirements and that there would be no change in existing ingress and egress used for the lot as the applicant has never had street access to and from the lot.

Continuing with his presentation, Attorney Keene addressed the hardship criteria by arguing that the entire parcel was unique in relation to surrounding properties as it was larger in size compared to surrounding properties. Attorney Keene also stressed and relied on the fact that access to the applicant's property had never been over the existing frontage of the lot but from the access easement over the Maloney property. Hence he reasoned that the rationale for the need for 100 feet of frontage was not applicable.

Attorney Keene concluded his presentation by arguing that due to the special conditions of the property no fair and substantive relationship existed between the general public purpose of the Ordinance and the specific application of the frontage requirement to the property. Finally he argued that substantial justice would be done as denying the request for the variance would deny the applicant's reasonable constitutional use of the property.

John Fitzgerald inquired as to whether the easement was a private easement particular to the applicant's property. There was further discussion about the hardship criteria and whether the use was reasonable. Inquiry was also made as to whether there were alternate means to create a subdivision. Rebecca Goldberg inquired as to why the access easement was created in the first instance. John Chagnon related that a larger piece of property was subdivided in 1977 and the applicant was granted an easement to access to the newly created parcel over the property of the grantors of the easement.

Mark Gardner inquired further about alternatives to creating a subdivision on the lot. Attorney Keene indicated that a subdivision could be created without the need for a variance by building a private road along one side of the existing lot and establishing 100 feet of frontage in the interior of the lot off of the road and for the benefit of proposed Lot B. While Attorney Keene represented that this alternative was a viable one, it was not the preferred one by the applicant. Using his Plan dated 2/29/16, John Chagnon drew a diagram of this alternative to the proposed subdivision plan which depicted the private road and the 100 feet of frontage off the road in the interior of the lot. Mr. Chagnon also indicated that he had drafted such a plan which was not available for review at the hearing.

John Fitzgerald made some further and general inquiries about the five criteria for granting variances to which Attorney Keene referenced and relied on his memorandum in support of the application.

Chairman Baker requested comments from member of the public.

Margie Heindel of 129 Wild Rose Lane asked about height restrictions and square footage limitations for building on the proposed new lot. Thereafter there was a general discussion among Attorney Keene, Tony Jalbert and John Fitzgerald as to what possibilities existed and what was probable in connection with building on the proposed new lot.

Tom Smith of 240 Wentworth Road spoke against granting the variance noting that it would establish a bad precedence. He related that he owned seven acres of land which his predecessors in interest attempted to subdivide but were denied by the ZBA due to a lack of required frontage.

Chairman Baker read a letter from Mr. and Mrs. Maloney who are abutters to the applicant's property. Mr. and Mrs. Maloney also own the property over which the applicant has an access easement. Mr. and Mrs. Maloney object to the granting of the variance and recited numerous reasons. These reasons included; a concern that there would be a diminution to the value of their property, potentially impeded access to gardening rights on the applicant's property reserved as part of an earlier conveyance, habitat disturbance, drainage from a creek and wetland issues.

Ken White one of the owners of the applicant spoke indicating that there has never been any gardening on his property by the abutters.

Chairman Baker closed the public comment session and asked the members of the ZBA to commence its deliberations.

Russell Cox spoke against granting the variance and said he did not believe there was a hardship established as an alternative existed to the proposed subdivision which per Attorney Keene's representations would not require a variance. Furthermore in Mr. Cox's opinion granting the variance would establish a poor precedence. He also observed that the proposed frontage of 41.97 feet was in title only and served no functional purpose and could not in all likelihood be utilized due to wetland issues. Additionally Mr. Cox noted that the applicant's access easement was ill-defined and limited in scope so as to potentially hinder the future need for full access to the property if the subdivision were established.

Rebecca Goldberg spoke against granting the variance and was of the opinion that the hardship test had not been met by the applicant.

John Fitzgerald noted the case was a complex one and noted further that if the applicant's access easement was in perpetuity then there was 141.97 feet available for a driveway.

Mark Gardner spoke against the variance noting that he thought the applicant failed to meet the hardship test.

Chairman Baker commented that the Maloney's concern about the diminution in value to surrounding properties was important and that it did not appear that the variance would meet the diminution of property values test.

Russell Cox moved to deny the variance premised upon the applicant's failure to meet the hardship test, the concern over the establishment of precedence, the diminution of surrounding property values, and due to the request being contrary to the spirit of the New Castle Zoning Ordinance pertaining to the requirement for 100 feet of frontage for lots in the R-3 Zone.

Mark Gardner seconded the motion and the motion to deny the variance carried by a vote of 4 to 1 with ZBA members Baker, Cox, Goldberg and Gardner voting in favor and John Fitzgerald voting against the motion.

The minutes of the March 17, 2016 meeting were reviewed and approved of unanimously.

There being no further business before the Board a motion was made by Mark Gardner to adjourn, seconded by Rebecca Goldberg which carried unanimously. The meeting was adjourned at 8:25 pm.

Respectfully Submitted,

Mark H. Gardner, Recording Secretary Pro Tempore