

APPROVED

APPROVED

**MINUTES OF THE NEW CASTLE ZONING BOARD OF ADJUSTMENT
Thursday, August 30th, 2018 – 7:00 p.m. (Town Hall)**

Members Present: Todd Baker, Chair, Mark Gardner, Rebecca Goldberg, Ben Lannon.

Members Absent: John Fitzpatrick, Margaret Sofio.

Others Present: Beth Barnhorst, 14 Pit Lane, New Castle, NH; Stephen Eldred, 180 Portsmouth Ave., New Castle, NH; Jane Finn, 169 Portsmouth Ave., New Castle, NH; Marc Jacobs, Certified Wetland and Soil Scientist, P.O. Box 417, Greenland, NH; Ann Finn Mayer, 3 Swan Terrace, Greenland, NH; Ann and Michael McAndrew, 27 Steamboat Lane, New Castle, NH; R. Timothy Phoenix, Hoefle, Phoenix, Gormley & Roberts, P.A., 127 Parrott Ave., Portsmouth, NH; Adele and Fred Pulitzer, 68 Wentworth Rd., New Castle, NH; Alex Ross, Ross Engineering, 1167 South St., Portsmouth, NH; Craig Strehl, 62 Main St., New Castle, NH; Michael Traister, 184 Portsmouth Ave., New Castle, NH.

Chair Baker called the meeting to order at 7:04 p.m. and asked attendees to sign in.

CASE #2018 – 05 Filed by Stephen D. Eldred, owner of 180 Portsmouth Avenue, Map #15, Lot #5, requesting a variance from Articles IV, Section 4.2 Table 1 and Article VII, Section 7.3.1, in order to permit demolition of the existing boathouse and replacement with a new accessory structure.

Timothy Phoenix, counsel for Applicant Stephen Eldred, presented a supplement to Mr. Eldred's application for zoning relief to permit demolition of the existing boathouse and replacement with a new accessory structure. Copies of plans from Charles Hoyt Designs and Ross Engineering were also distributed. Attorney Phoenix noted that he met with Town Building Inspector Don Graves, and decided to do a new submission rather than use portions of the original application presented to the Zoning Board of Adjustment on December 20, 2017 or the amended application presented on June 19, 2018. The amended application did not include a request for relief from Article IV, Section 4.2 Table 1. Therefore, the Applicant has completed a new application to include requests for relief to the 20 foot front yard setback requirement in Section 4.2.1, as well as the requirement set forth in Article VII, Section 7.3.1 that the replacement of any nonconforming building "must not exceed in size, shape, or volume that of the building or structure that was demolished".

The existing boathouse is a nonconforming structure estimated to have been built in the 1960s, thus predating Town zoning and wetlands ordinances, Federal Emergency Management Agency (FEMA) regulations, and the New Hampshire Shoreland Protection Act. Attorney Phoenix emphasized that the project relates only to the boathouse, which is in disrepair. The boathouse is on a 43,066 square foot lot, just short of an acre, along with an existing new home. The entire boathouse falls within the 100 foot tidal buffer zone.

The proposal is for the existing boathouse to be torn down, digging up the footers and removing the existing foundation. The proposed boathouse would sit on new stilts and concrete. Mr. Ross, of Ross Engineering, noted that the initial plan was for the property owner to renovate and repair

the existing structure, but after speaking with the Town Building Inspector, he concluded that even small improvements would be well over the threshold set by FEMA that requires the building to be lifted in order to be compliant. Mr. Ross remarked that the Applicant considered moving the entire boathouse out of the floodplain zone, but felt that the building and its usage works in its current location.

The current boathouse is 784 square feet and has a 144 square foot ramp, which is approximately 19 feet from the highest observable tide line, a 112 square foot deck, 17 square feet of stairs, and an impervious gravel driveway. The structure is currently 12.15 feet from the front yard setback to the overhang, and 12.65 feet from the setback to the wall of the structure.

The proposed footprint would be 735 square feet, with a 130 square foot deck, 73 square feet of stairs and pervious pavers for the driveway. There would be no ramp. The first floor elevation would be raised from 9.46 feet to 13 feet, in compliance with FEMA requirements. The structure would be moved back roughly four feet to improve the front yard setback, which would make the boathouse 13.44 feet from the setback to the overhang, and 16.20 feet from the setback to the wall. The building currently has a shallow roof slope, and the proposal calls for a change in roof pitch, which would raise the roof nearly eight feet. The proposed structure would result in a volume increase of 19.5%.

Attorney Phoenix commented that Charles Hoyt, who could not be present at the meeting due to a previously scheduled commitment, designed the proposed boathouse using his experience and knowledge of the seacoast area to come up with a suitable design that fits with the character of the Island. He added that the appearance of the proposed building would be discussed in front of the Historic District Commission, and is therefore not an issue for the Town Zoning Board to decide upon. Furthermore, Mr. Eldred would have to go in front of the Town Planning Board for a conditional use permit, and bring his proposal in front of the Town Conservation Commission and the NH Department of Environmental Services.

Attorney Phoenix emphasized the need to balance relief, in terms of the increase in height of the proposed boathouse, with the benefits that would be provided with the proposed structure, namely a reduction in impervious surface area and raising the building to prevent it from falling into the ocean. Attorney Phoenix then went through the five criteria for zoning relief. In determining whether the variance will not be contrary to the public interest and whether the spirit of the ordinance is observed, Attorney Phoenix noted that removing the old boathouse, which is already falling apart and has to be raised to be compliant with FEMA regulations, is promoting the health, safety, and general welfare of the community. A request for an accessory dwelling unit has been withdrawn, and is not being proposed at this time. Granting the variance will not violate the basic zoning objective of promoting the health, safety, and general welfare of the community, as neither of the variances requested threaten the general welfare of the community.

Attorney Phoenix argued that granting the variance will not diminish values of surrounding properties, as there are not any lots that are in close proximity to the boathouse, other than the Town Cemetery across the street. The proposed structure would increase the value of the Eldred's property. Denial of the variance would result in unnecessary hardship, as the proposed boathouse would not change or harm air, light, space, or separation from neighbors. Attorney

Phoenix claimed that the proposed expansion would not impact the surrounding wetlands any more than repairing the existing building, and that special conditions exist given that the building has always been in violation of codes. The proposal is therefore reasonable, according to Attorney Phoenix. Finally, substantial justice will be done by granting the variance, as the building needs to be replaced, and the Applicant seeks to improve the structure to get more use out of it. Denying Mr. Eldred's right to better enjoy his property would be a loss to him, and there is no benefit to the public by denying the variance.

Mr. Gardner questioned why Attorney Phoenix did not first present to the Town Planning Board, to which Attorney Phoenix responded that he felt the nonenvironmental issues should be addressed first. Mr. Ross added that there was discussion with the Town Building Inspector about going in front of the Planning Board first, but that Mr. Graves felt presenting in front of the ZBA first would be the best approach. Board members asked for clarification on the current state of plumbing and electricity in the boathouse. It was noted there is no plumbing in the current boathouse, and that there is electricity, although it may be shut off. The Eldreds' home is on Town sewer, and there is currently no bathroom in the existing boathouse.

After no further questions from Board members, discussion was opened to the public at 7:39 p.m. Chair Baker read a letter from the Town Building Inspector, which outlined the need for zoning relief for the previously cited ordinances, as well as the need for a conditional use permit from the Planning Board. Chair Baker read a letter from Jane Finn, written in opposition to the proposal for its negative environmental impact. Abutter Michael Traister submitted a letter in support of the proposal that was read by Chair Baker. Lastly, Chair Baker read a letter from wetlands scientist Marc Jacobs, who commented on how the proposed boathouse would be done working alongside the Conservation Commission and using protective measures given the sensitivity of the surrounding wetlands.

Mr. Traister commented that it was Mr. and Mrs. Eldreds' property, and therefore they should be able to use it as they please. Ms. Mayer spoke against the proposal, noting that her family owned the property for decades, and that at the time of selling the property to the Eldreds, the Finns informed the Eldreds that the boathouse had no plumbing, so they were aware of the use of the structure when they acquired the property. She expressed concern that boats would not be able to be carried without causing damage to the wetlands, and that the idea of having plumbing in the proposed structure indicates that it will be utilized for other reasons, which leads her to question when the structure would become an actual residence. Ms. Finn questioned how the use of the boathouse could be changed if it was grandfathered, and was concerned about how installing plumbing would impact the wetlands.

Ms. Barnhorst spoke on behalf of the New Castle Conservation Commission, and noted that previous work on the property, such as the addition of a driveway and curbing, along with clear cutting of trees, was done without permission, which led to concerns that changes have already been made on the property that have negatively impacted the surrounding wetlands. She added that a replacement boathouse would have to be in-kind and not changing its use, but the proposed structure seems to be on its way to being more than a boathouse. She acknowledged the need to raise the boathouse, but was concerned about what this would lead to once people start building within the wetland buffers.

Attorney Phoenix responded that the Applicant is coming before the ZBA for the requested relief needed, and is not asking for a change of use of the structure because it is part of a residential property and is not an apartment. He stated that the ZBA issue at hand is the location of the building vis-à-vis the front property line and the location in the wetlands, and reiterated that environmental concerns would be addressed with the Conservation Commission. Attorney Phoenix again stated that the Applicant does not need a height variance, and urged the Board to focus only on the two variances requested. Mr. Ross added that they anticipate a lengthy process with the Town Conservation Commission, Planning Board, and Historic District Commission. He felt that this would be an opportunity to protect the wetlands buffer and make a safe structure, while keeping the view of a boathouse at its current location.

Chair Baker closed the public comment session at 7:57 p.m. Ms. Goldberg commented that while she appreciates the desire to maintain the current boathouse and understands that something needs to happen, she believes the proposal was overbroad. Ms. Goldberg does not feel that the Applicant has met the criteria needed to grant the variance, specifically citing the first and second criteria as outlined in the Applicant's supplement provided by Attorney Phoenix. These criteria are, respectively, that the "variances will not be contrary to the public interest" and that "the spirit of the ordinances [are] observed". Ms. Goldberg cited Objective 5 "Preserve the appearance of the New Castle shoreline" in the New Castle Zoning Ordinance Master Plan Section 1 as being particularly problematic when taking into account Mr. Eldred's proposal. She also took issue with the statement in the Applicant's supplement that "the removal of the existing boathouse and reconstruction of a tasteful structure inspired by New Castle's past where no improvement to structure can be made without the same or similar variances, clearly preserves the appearance of the New Castle shoreline".

Ms. Goldberg further stated that the fourth criteria as written in the Applicant's supplement, that "denial of the variance results in a[n] unnecessary hardship", and that "c. the proposed use is reasonable" has not been demonstrated in the proposal. She disagreed with the assertion that the proposed use is reasonable, and commented that the proposed changes are indeed substantial. She expressed confusion over the Applicant's position, as presented through Attorney Phoenix, that the proposed structure is still a boathouse, when part of the proposal included raising the ceiling roughly 8.5 feet to create a living space. When weighing the Applicant's property rights with the duties of the regulatory body of the ZBA, Ms. Goldberg concluded that she is inclined to deny the proposal, but would be open to a variance that "preserves the boathouse as a boathouse".

Mr. Lannon agreed with Ms. Goldberg that the current structure is "essentially a shed" and is currently appropriate to store boats. While he understands that the current structure can no longer be used as is because it is falling apart, he expressed concern that the design indicates a structure that is really not even for boat storage anymore, and would change the character of the property. Mr. Lannon acknowledged that while this could be subjective, he cited issues with the "reasonable use and essential character arguments" presented in the application.

Mr. Gardner added that given the sensitive nature of the site, he would like to see a project that does not need a variance. He felt that the Applicant should have gone in front of the Town

Planning Board first for a conditional use permit. Mr. Gardner stated that he agreed with Ms. Goldberg's sentiment that the proposed changes are, in fact, substantial.

Chair Baker pointed out that the spirit of the ordinance is to keep from building in wetlands areas, and that if this building did not exist and someone asked to build a boathouse in its current location, it would not comply with the spirit of the ordinance. He felt that the lot size is big enough where the Applicant could move the proposed structure to a different location further from the wetlands.

Ms. Goldberg motioned to deny the variance application as submitted for 180 Portsmouth Avenue, Tax Map 15, Lot 5, because it does not meet the criteria set forth, specifically the first and second criteria, and also failed to establish unnecessary hardship through denial of the application. Mr. Gardner seconded. The motion passed by a vote of four to zero.

CASE #2018 – 06 Filed by Fred and Adele Pulitzer, owners of 68 Wentworth Road, Map #13, Lot #6-1, requesting a variance to Article VII, Section 7.5.1, in order to permit a second floor to be built above the existing garage.

Chair Baker recused himself from the case, as he is a direct neighbor to the Applicants. Mr. Gardner served as interim Chair for the hearing of the case. Mr. Pulitzer stated that he and his wife purchased the home at 68 Wentworth Road approximately four years ago. The house is a single-story, one-bedroom house with an attached two-car garage. The structure is located behind mature trees and sits on 1.3 acres, so it is not visible from Wentworth Road or Main Street. The foundation was constructed 10 feet from the rear property line, which was in conformance at the time of construction. The house is a nonconforming structure because the current setback requirement from the rear property line is 15 feet.

The Pulitzers are requesting zoning relief in order to “build a second floor above the existing garage for the purpose of adding a second bedroom with a sitting area and bathroom, as well as a study and a storage closet”. The walls of the garage would be raised, but there would be no expansion to the footprint. Mr. Pulitzer mentioned that they are considering using a hip-roof design on the proposed addition, which would be in keeping with the architectural design of a neighboring barn/garage. The setback would remain 10 feet, and the structure's height increase over the garage would be an estimated eight feet.

Mr. Pulitzer highlighted the reasons for the proposed expansion being to accommodate potential medical reasons, such as an affected spouse or a live-in care giver, to accommodate family members and other guests, and to create a study area and storage closet in order to relocate such uses from the basement, where stored items are subject to mold and possible flooding. He also added that the design of the house would be made more conforming to surrounding properties, which are typically at least three-bedroom homes.

The Pulitzers outlined the reasons why the application meets the five criteria for a variance. There would be no diminution of property value, as the proposed addition “would serve to enhance the values of the neighboring properties” by making the exterior design more similar

and by being more conforming to the sizes of neighboring houses. Granting the variance would benefit the public interest, as the proposed two-story design would “make the home more conforming to town-wide standards, although the actual footprint would not be expanded”. Also, additional real estate taxes would be collected by the Town because of the increased building area. Denial of the variance would be an unnecessary hardship to the owner because no change in the setback is proposed, and the house was built in conformance with zoning that has subsequently changed. Substantial justice will be done by granting the variance because the proposed size increase would make the house more compatible with larger surrounding homes in the neighborhood and in New Castle. Lastly, the spirit of the ordinance is observed because “the proposed addition does not expand the footprint of the building, and therefore the setback remains unchanged”. Furthermore, the proposed second floor would hardly be visible from Wentworth Road given the location of the structure at the rear of the lot and behind mature trees.

Ms. Goldberg asked for clarification that the Applicants are indeed not asking for a variance in lot coverage, height, or building area. Mr. Pulitzer confirmed this, noting that their home is outside the 50 foot setback, and they would not need to go before any other boards in New Castle besides the ZBA. He also confirmed that the house is on Town water and sewer. Mr. Pulitzer also stated that the response from neighbors to their proposal has been very positive.

Upon hearing no further questions from the Board, interim Chair Gardner read letters from neighbors William Connell and Peter Hamblett, both in full support of the application. Mr. Strehl stated that he has no objection to the application. Mr. Todd Baker, of 23 Main Street, spoke in support of the application, stating that the ordinance was changed after the structure was built, and there is “plenty of room on [their] lot”. He felt that the changes are completely appropriate and would not have any detrimental impact on the neighborhood. Interim Chair Gardner closed the public comment session at 8:28 p.m.

Ms. Goldberg felt that the application was reasonable and was inclined to grant the variance. Mr. Lannon added that “this [was] what the Zoning Board is for”, given the fact that the codes have changed, while the application presented was, in Mr. Lannon’s opinion, reasonable, and met all criteria for a variance. Interim Chair Gardner had no objection to granting the variance as requested.

Mr. Lannon motioned to approve the variance as requested at 68 Wentworth Road, Tax Map 13, Lot 6-1, as it meets the requirements set forth by the New Castle Zoning Ordinance. Ms. Goldberg seconded. The motion passed unanimously by a vote of three to zero.

2. Approve Minutes.

Mr. Lannon moved to accept the July 2018 minutes as submitted. Ms. Goldberg seconded. The motion carried unanimously.

3. Set Date of Next Meeting.

Chair Baker announced that the next Zoning Board of Adjustment meeting will be held on Thursday, September 20th, 2018 at 7:00 p.m.

4. Adjournment.

There being no further business, Chair Baker moved to adjourn the public meeting. Mr. Gardner seconded. The motion carried, unanimously, and the meeting adjourned at 8:38 p.m.

Respectfully Submitted,

Meghan Rumph
Secretary