

**MINUTES OF THE NEW CASTLE ZONING BOARD OF ADJUSTMENT
Tuesday, July 17th, 2018 – 7:00 p.m. (Town Hall)**

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

Members Absent: Margaret Sofio.

Others Present: Kevin Baum, Hoefle, Phoenix, Gormley & Roberts, P.A., 127 Parrott Ave., Portsmouth, NH; Paul Dobberstein, Ambit Engineering, 200 Griffin Rd., Portsmouth, NH; Peter Rice, 11 Atkinson St., New Castle, NH; Julia Thomas, 15-17 Atkinson St., New Castle, NH.

Chair Baker called the meeting to order at 6:59 p.m. and asked attendees to sign in.

CASE #2018 - 04 filed by Julia Thomas, owners of 15-17 Atkinson Street, Map #18, Lot #10, requesting a variance from Article IV, Section 4.2.1.3 and 5, in order to permit construction of an attached garage, exceeding lot and building area.

Prior to hearing the case on the agenda, Mr. Gardner noted that Hoefle, Phoenix, Gormley & Roberts, P.A. have represented him in the past, and that he went to law school with several of the Phoenixes. Chair Baker added that Attorneys Kevin Baum and Kimberly Memmesheimer of the above-mentioned law firm have worked with him on a separate project. Chair Baker and Mr. Gardner both stated that this will not impact the hearing of this evening's case, and that they can remain unbiased and impartial.

Attorney Baum presented an overview of the proposal of applicant Julia Thomas. Ms. Thomas' property is a small duplex covering 1,575 square feet on a 6,279 square foot lot. The property is nonconforming for its lot size and coverage. Town of New Castle Zoning Ordinance requires the minimum lot area per dwelling unit to be 20,000 square feet. The proposed construction would increase the lot coverage and building area greater than what is allowed per Town Ordinance. Ms. Thomas is seeking to add an attached 1.5 story garage with parking on the first floor, and storage on the half floor above. The garage would be approximately 512 square feet and constructed behind the existing building with direct access to the house. A rear sunroom and impervious walkway would be removed, and the existing impervious driveway would be replaced with a pervious surface. Attorney Baum noted that Ms. Thomas bought the property in 2015, and prior to that, until approximately 2010, there was a garage located at the rear right of the lot. The previous garage was in disrepair and had to be taken down.

Mr. Dobberstein, an engineer with Ambit Engineering, explained that the impervious surface area on the lot would be reduced from 43.3% to 37.5%, with the lot coverage being reduced from 2,718 square feet to 2,357 square feet. Attorney Baum added that the Memorandum submitted with the application has a slight error in the total projected impervious area, as it should be 2,357 square feet (37.5%) as shown in the submitted plan. This is because Mr. Dobberstein found that part of the driveway would have to remain impervious due to bedrock and ledge lying directly below the surface, which would prevent effective water infiltration. Attorney Baum stated that the building area would increase from 2,413 square feet to 2,951 square feet with the proposal

presented. He noted that the proposed building area is only slightly larger than the building area prior to 2010 when the previous garage existed.

Presented with the application were six letters of support from the following abutters: Greg Baker, 18 Atkinson St. (letter undated), Peter Peirce Rice, 11 Atkinson St. (letter dated May 6, 2018), Christian Kozowyk and Sara Forrest, 28 Atkinson St. (letter undated), Mark and Sally Fodero, 69 Piscataqua St. (letter dated May 15, 2018), Peter and Daphne Schwab, 63 Piscataqua St. (letter dated May 15, 2018), and Ira and Jennifer Schwartz, 96 Main St. (letter dated May 16, 2018). Attorney Baum added that no letters of disapproval have been received.

Mr. Peter Rice of 11 Atkinson Street was present to voice his support of Ms. Thomas's proposal. He commented that she is a great neighbor and that he does not find her plans offensive at all.

Board members asked questions regarding the proposal, before Attorney Baum went through the five criteria for zoning relief. Ms. Goldberg asked if another place was considered for the garage, to which Attorney Baum said that the prior garage was in the side setback, whereas the location of the proposed garage would be out of the setback and would provide the most visual screening. Attorney Baum stated that the design of the proposed garage is better for abutters, and that functionally, it fits well with the character of the neighborhood.

Mr. Gardner inquired about access to the attic above the garage. Ms. Thomas replied that the half story above the garage could not be accessed from the house, and that it would only be accessible by stairs within the garage. Attorney Baum added that the applicant has no intention of having running water or a bathroom in the garage, and that aside from electricity, there would be no utilities going into the proposed structure.

Upon request from Mr. Gardner, Mr. Dobberstein reviewed the calculations of impervious and pervious area on the lot. Chair Baker asked what the driveway would be composed of, to which Mr. Dobberstein stated that while it is up to Ms. Thomas to decide, they have been looking into porous pavement, as well as a material called "grav-pave", which would maintain pervious qualities. The driveway for the other part of the duplex would remain an impervious gravel surface, as it was determined that the shallow bedrock would prevent adequate drainage should a pervious driveway be put in place. Mr. Lannon requested clarification about the current parking situation. Attorney Baum said that there is currently parking in the driveway, and that parking on the other side of the duplex would still be available with the proposed garage.

Ms. Goldberg asked if there was any legal basis for mentioning the existence of the previous garage. Attorney Baum replied that the applicant is not claiming any grandfathered use, but the fact that there used to be a garage on the property speaks to the point that the proposed garage is keeping with the character of the neighborhood.

Attorney Baum then addressed how Ms. Thomas has met the five criteria for zoning relief.

1. *The values of surrounding properties are not diminished:*

Citing the support of several abutters, Attorney Baum concluded that the proposed plan "will in no way diminish surrounding property values", and that the value of the applicant's property would increase.

2. Substantial justice is done:

Attorney Baum stated that the New Hampshire Supreme Court has ruled that “any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice”. Denying the variance would cause harm to the owner and applicant, and would cause no benefit to the public. Given the small lot size and the fact that the house has no basement or third floor attic, Attorney Baum stated that the proposal is reasonable and improves livability. The design is consistent with many surrounding homes that have garages, and by placing the garage behind the house, visibility from surrounding lots and the street would be reduced.

3. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship:

Attorney Baum argued that the small lot size and existing structure create special conditions, as “any expansion whatsoever will require...relief”. He cited a NH Supreme Court ruling that if the proposed use is permitted, it is deemed reasonable. Ms. Thomas would benefit from indoor parking and storage, especially given winters in New England. Attorney Baum concluded that there is no fair and substantial relationship between the purpose of the ordinances and their application. The lot coverage and building area limitations are meant to prevent overcrowding and “over bulking” of residential areas in town. The proposed garage would be behind the existing home and hardly visible, and there would be a significant reduction in impervious surface area.

4. The variance will not be contrary to the public interest:

According to Attorney Baum, the proposed plan will improve existing conditions by reducing impervious surface. The proposal would be beneficial to the owner while remaining consistent with the character of the surrounding neighborhood.

5. The spirit of the ordinance is observed:

Attorney Baum concluded that granting the proposal would in no way threaten the health, safety and welfare of the community.

Chair Baker closed the public meeting at 7:31p.m. and opened discussion amongst the Board. Mr. Fitzpatrick felt that the argument was very well-presented, and he particularly liked the plans that showed how the proposed structure would fit within the setbacks. Mr. Lannon agreed that from a lot coverage standpoint, the proposal brings obvious improvements. He noted that he was struggling with the hardship requirement, as he felt that the applicant’s property is not distinguishable in shape or size from other surrounding lots. He added that not all owners in the neighborhood have garages or are able to construct them. Ms. Goldberg shared her trouble with the application meeting the hardship requirement, and also brought up concern with minimizing high density development, given that the proposal would be adding an attached garage with a roof and walkway.

Mr. Gardner stated that he did not have a problem with the application, provided that the applicant follow through with all details of the plan as submitted, including that the sunroom be removed. He would also like to include the requirement that the space above the garage not be habitable.

Chair Baker commented that because other homes in the neighborhood have garages, and given neighbors’ support of the proposal, there is no fair and substantial relationship between the ordinances and its specific application with Ms. Thomas’ proposal. He expressed that the applicant is making a reasonable request that is not altering the character of the neighborhood.

Mr. Gardner added that the proposal would be an improvement to the neighborhood, especially in comparison to the dilapidated garage that previously existed on the lot.

Mr. Fitzpatrick moved to grant the variances as requested by applicant Julia Thomas, with a caveat that the garage not be a dwelling, and that the proposal is subject to the approval of all other appropriate Town Boards. Mr. Gardner seconded the motion. Ms. Goldberg opposed on the grounds that the applicant had not met the unnecessary hardship requirement. The motion passed by a vote of four to one.

2. Approve Minutes.

Chair Baker moved to accept the June 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 Tuesday, August 28, 2018 at 7:00 p.m.

4. Adjournment.

There being no further business, Chair Baker moved to adjourn the public meeting. Mr. Fitzpatrick seconded. The motion carried, unanimously, and the meeting adjourned at 7:43 p.m.

Respectfully Submitted,

Meghan Rumph
Secretary