

**MINUTES OF THE NEW CASTLE ZONING BOARD OF ADJUSTMENT
Thursday, September 27th, 2018 – 7:00 p.m. (Town Hall)**

Members Present: Todd Baker, Chair, John Fitzpatrick, Rebecca Goldberg, Ben Lannon, Margaret Sofio, Alyson Tanguay.

Members Absent: Mark Gardner.

Others Present: Elizabeth Barnhorst, 14 Pit Lane, New Castle, NH; Ellen and Randolph Bryan, 34 Wentworth Rd., New Castle, NH; Paul Dobberstein, Ambit Engineering, 200 Griffin Rd. Unit 3, Portsmouth, NH; Kristy Garretson, 4251 Glass Factory Bay Rd., Geneva, NY; Mary Pat Gibson, 91 Cranfield St., New Castle, NH; Pete Heronemus, 114 Mt. Warner Rd., Hadley, MA; AJ Homicz, 8 Main St., New Castle, NH; Peter Hunt, 14 Pit Lane, New Castle, NH; Mark Lacasse, 39 Wentworth Rd., New Castle, NH; Harvey Mason, 4253 Glass Factory Bay Rd., Geneva, NY; Bernard Pelech, Attorney; R. Timothy Phoenix, Hoefle, Phoenix, Gormley & Roberts, P.A., 127 Parrott Ave., Portsmouth, NH; David Severance, 24 Elm Ct., New Castle, NH; Steven and Patricia Wilson, 27 Colonial Lane, New Castle, NH.

Chair Baker called the meeting to order at 6:57 p.m. and asked attendees to sign in.

CASE #2018 - 07 filed by Peter Hunt and Elizabeth Barnhorst, owners of 14 Pit Lane, Map #13, Lot #1, requesting a variance from Article 4, Section 4.2 Table 1, in order to construct an 8'x26' house addition and 8.5'x7' porch addition 17.9' from the front property boundary where 20' is required.

Attorney Timothy Phoenix of Hoefle, Phoenix, Gormley & Roberts, P.A. was present on behalf of Applicants Peter Hunt and Beth Barnhorst. Mr. Hunt and Ms. Barnhorst are seeking to construct an 8 foot by 26 foot single-story addition to the existing house and an 8.5 feet by 7 feet porch extension 17.9 feet from the front property boundary, where 20 feet is required. The addition would allow for an expanded dining room to accommodate the Applicants' growing family, while the porch would be extended to connect the addition to the existing house.

The property includes an Easement area granted by the Town of New Castle to the previous homeowners at 14 Pit Lane. Access to the home is made via a driveway that runs through the Easement. Attorney Phoenix noted that while the proposed additions are 40.0 feet to 36.7 feet away from Pit Lane, the legal distance from the property boundary at its nearest point is 17.9 feet, thus necessitating zoning relief. Chair Baker asked if the Easement is exclusive and irrevocable. Attorney Phoenix stated that in his legal opinion, the Easement is permanent, and added that Mr. Hunt and Ms. Barnhorst have exclusive rights to use the land, and have been maintaining the area in the Easement since they bought the home at 14 Pit Lane.

Mr. Hunt explained that in the 1990s, a large boulder on Pit Lane was removed by the New Castle Department of Public Works in order to straighten out the road, which left an area that is now included in the Easement between the Town and the owners of 14 Pit Lane. He also noted that one of the requirements to purchasing the home from its previous owners was that the septic be moved away from the wetlands, which he and his wife have done.

Mr. Lannon asked why the Applicants did not seek to build the additions on a different side of the house. Ms. Barnhorst responded that alternative locations would not work given the close proximity to wetland setbacks. She added that the New Castle Conservation Commission has approved the proposed additions within the 100 foot wetlands buffer, and that she and her husband will still need to go before the Town Planning Board for a conditional use permit given that the construction is approximately 99 feet from the wetland setback where 100 feet is required.

Attorney Phoenix distributed a statement of support of the Applicants' addition, signed by Tom Bianchi, Theresa Frampton, Steve Tabbutt, and Tell White, all neighbors on Neals Lane and Pit Lane. The statement reads that the "addition is minimal and will have no impact on neighbors as it will be set back over fifty feet from Pit Lane".

Attorney Phoenix then addressed how Mr. Hunt and Ms. Barnhorst have met the five criteria for zoning relief.

1. *The variance will not be contrary to the public interest; and*
2. *The spirit of the ordinance is observed:*

Attorney Phoenix argued that the proposed additions keep New Castle primarily residential, encourage owner occupancy and preserve the character of the Town. The additions "remain setback well away from Pit Lane and extend less than the existing garage." He added that the proposal is limited and would be an overall increase of approximately 267.5 square feet. Therefore, the essential character of the locality would not be altered. The public health, safety and welfare would not be threatened given the distance of approximately 40 to 50 feet between the additions and the road traveled.

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

The addition is tasteful, reasonably sized, and will blend in with the existing home while keeping with the style of the surrounding area. Neighbors on Neals Lane and Pit Lane are in support of the proposal as evidenced in their submitted statement.

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

Special conditions exist because of the unique shape of the lot, specifically the southwestern property boundary and the "pinch point" of the triangular Easement with the Applicants' property line, which creates nonconforming conditions for the front setback. Wetlands surround the property on other sides. The intentions of setback requirements, that is, to maintain sufficient air and light and prevent overcrowding, are met in this instance, as the Easement "creates conditions that effectively greatly exceed" the front setback requirement. Therefore, there is no reason to apply the strict 20 foot distance in this instance because the only people traveling through the setback are the homeowners themselves. The proposal is reasonable and denial would be unreasonable.

5. *Substantial justice is done:*

By denying the variances requested, there is no benefit to the public that would outweigh the hardship to the Applicants, who are seeking to create a more livable home. The Easement creates an effective setback, and the proposed additions would extend less than the existing garage.

Upon hearing no comment from the public, Chair Baker closed the public session at 7:19 p.m. Mr. Fitzpatrick felt that the request is reasonable and de minimus. The Application appears to have met all requirements from the Zoning Board. Ms. Sofio agreed, and cited her appreciation for the legal opinion being clearly laid out. Mr. Lannon added that there is a unique burden on the property with the Easement area, which Ms. Goldberg agreed with.

Mr. Fitzpatrick moved that the Petitioners have met the criteria necessary for the requested variance, and motioned to approve the Petition as submitted. Ms. Goldberg seconded. The Motion passed unanimously.

Case #2018 – 08 filed by Steven and Patricia Wilson, owners of 27 Colonial Lane, Map #17, Lot #15, requesting a variance to Article 4, Section 4.2 Table 1 and Article 7, Section 7.5.1 in order to permit construction of a conditioned space over the existing garage.

Applicant Steven Wilson presented a proposal to expand the space over the existing garage in order to expand living space in the house. The garage and breezeway footprint would remain the same. There would be an 8 foot by 6 foot balcony on the proposed second floor that would project approximately 7 feet above ground level. The proposal also includes an external staircase off the proposed addition for emergency purposes. Mr. Wilson stated that the addition would not be used as an accessory dwelling unit, and would have a bathroom but no kitchen.

The pre-existing structure is nonconforming and sits within the side setback. The proposed addition would be 8.5 feet from the side setback, where 15 feet is required. Mr. Wilson noted that the house was built in the 1950s and followed the building codes at that time. He added that he and his wife have recently received approval from the New Castle Planning Board to change their property line with the abutting Marples at 29 Colonial Lane to make their lot less noncompliant. The Wilsons have personally not received any objections to the proposal.

Mr. Wilson presented a brief argument of how the Application meets the five criteria for zoning relief.

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

The proposed addition is in keeping with the style and size of other homes in the neighborhood, and does not block abutters' access or restrict their use. The addition keeps the present footprint, with the exception of the proposed balcony.

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

The proposal would allow for a first floor bedroom, which would enable the Applicants to remain in their home as they age. The public interest of the Town "would be enhanced by showing sensitivity" to the aging population of the residents.

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

The house was built before present setback requirements, and is situated in a way that prohibits alternative locations for the proposed addition.

4. *Substantial justice is done:*

There would be no harm to the abutters or the general public by granting the requested variances.

5. *The spirit of the ordinance is observed:*

The proposed use of the addition for a living space is in keeping with the residential neighborhood.

Attorney Bernie Pelech was present on behalf of abutters Jay and Mary Pat Gibson of 91 Cranfield Street, who are objecting the proposal. He argued that the expansion being proposed by the Wilsons is substantial. By adding a second story to the breezeway in addition to above the garage, the living area would be expanded by nearly 25%. He noted that the Wilson's lot coverage area of approximately 40% is already nonconforming, as only 20% is permissible, and the existing garage is only 8.5 feet from the Gibson's lot line, where 15 feet is required. Furthermore, Attorney Pelech stated that the external stairway and balcony being proposed by the Applicants would project further into the already nonconforming side setback.

Attorney Pelech presented an alternative plan in which the Wilsons could still have an addition above the garage to make room for a first floor bedroom, but would not require any variances from the Zoning Board. He distributed a sketch showing the existing garage and connecting breezeway moved approximately 8 feet forward out of the setback. Therefore, there is no hardship, as the property can be reasonably used and accommodate the proposed addition without requiring zoning relief.

Attorney Pelech also argued that granting the variances would be contrary to the spirit and intent of the ordinances. Article 7 is intended to reduce nonconformity in structures, yet the Wilson's Application would be increasing the nonconformity of the existing structure that falls within the side setback. This would result in a substantial increase in bulk and height of the Wilson's house. The mass and scale of the structure would affect the amount of light and air in the Gibson's backyard, and the balcony would affect the Gibson's privacy, according to Attorney Pelech. This would be detrimental to the Gibson's property value. He also added that there are no special conditions to the Wilson's property, as all properties in the area are roughly the same size and proximity to the wetlands.

Mary Pat Gibson spoke after Attorney Pelech, and highlighted her issues with the scope of the proposed addition. The visual impact of the addition would be significant given the already close proximity between the Wilsons' garage and the Gibsons' property. She felt that setback ordinances are important to have in a small town such as New Castle, so they should be honored. Ms. Gibson noted that she did an addition to her house and was careful to stay within the setbacks while also doing substantial landscape and hardscape to the yard, which was also to the benefit of the neighboring Wilsons. She expressed the importance of the visual aspects of her property to her and her husband, and was greatly concerned about the substantial impact the proposed additions would have on them.

After hearing the Gibsons' concerns, Mr. Wilson responded that it would be a substantial cost burden to demolish and rebuild the garage and breezeway in a different location, as suggested by Attorney Pelech. This would also substantially change the appearance of the Wilsons' home. Mr. Wilson felt that it would be difficult to move the garage because of wetlands concerns, since the existing house sits within 50 feet of a Class B wetlands. He offered that if the Gibsons are concerned about the balcony, he could do without it. Mr. Wilson argued that he and his wife

currently look at the back of the Gibsons' garage, and that the outdoor space described by Ms. Gibson is on the other side of the property. The proposed addition would not affect the Gibsons' sightline of the wetlands, nor the sightline pulling out of their garage, according to Mr. Wilson.

After hearing no further comment from the public, Chair Baker turned to the Board for comments. Mr. Fitzpatrick felt that without having objections, he would have been inclined to accept the proposal, but given the Gibsons' objection, he is hesitant to accept the Wilsons' request for variances. He added that the Applicant, in his opinion, did not adequately articulate how the five criteria for zoning relief have been met.

Mr. Lannon stated that he was struggling between the hardship for the property owners versus the hardship for the neighbors should the variances be granted. Ms. Sofio agreed, and noted that while she is sympathetic to wanting to age in place and in the comfort of one's home, the proposal is a fairly large expansion to an already nonconforming lot. She said that the Board's hands were tied in terms of permitting the requested expansion when there is not unanimity amongst the neighbors.

Ms. Goldberg concurred with previous sentiments, and was also feeling torn. She noted that while she understands the need for a first floor bedroom, the neighborhood is already very dense and the expansion is large. She also commented that the application was not very clear in terms of what the volume of the proposed addition would look like, which made it difficult to determine whether the five criteria had been met.

Chair Baker stated that he struggled the most with the diminution of neighboring property values. He felt that if Mr. Wilson had full support from all abutters, he would probably get support from the Zoning Board. But given the strong opposition of one of the abutters, he feels that the variance criteria are not reasonably met.

Mr. Fitzpatrick concluded that this situation may be able to be worked out with a discussion amongst neighbors of the best solution that satisfies all parties' needs and concerns. He suggested a more modest scope for the proposed additions, and providing a more descriptive demonstration of how the five criteria for zoning relief have been met. Mr. Fitzpatrick moved that having found the Petitioners have not met their burden of proof with respect to meeting relief requirements for the requested variances, the Petition as submitted be denied. Mr. Lannon amended this Motion by citing the specific concerns of the diminution of property values, the issue of hardship, and the objection of the Abutters. Ms. Sofio seconded the amended Motion. The Motion passed unanimously.

Case #2018 – 09 filed by Ellen and Randolph Bryan, owners of 34 Wentworth Road, Map #18, Lot #64, requesting a variance to Article 4, Section 4.2 Table 1 in order to permit construction of attached two-car garage within the setback.

Randy Bryan presented a proposal for an attached two-car garage that would extend approximately 9.5 feet into the 15 foot setback with the east abutter, Jennifer Feder Kospers and Elizabeth Feder. The garage would be 23 by 24 feet in size. Mr. Bryan noted that the house was

built in the 1800s and had an addition built in the 1920s. It has been owned by the family since 1950 and is in need of major renovations. The Applicants park along the street, as there is currently no garage at the property. The intention for the space above the garage is for storage, since the house does not have a full height basement, and only has one closet. As part of the renovations, the Bryans would remove a 10 foot by 20 foot one story grandfathered shed that sits within the west setback, and would build a pervious driveway. Mr. Bryan stated that the goal of the renovations would be to keep as much of the existing house as possible and optimize the space.

Mr. Bryan explained that after speaking with all neighbors, the proposed location of the garage is the least contentious and fully satisfying for all parties, while having the least impact on neighbors' privacy and views of the ocean. Most of the structure would be hidden by hedges along the property line of the Bryans and the Feders. The Bryans would be able to preserve the knoll on their property, which they feel is the highlight of their lot, having served as a central spot for family gatherings for decades.

Mr. Lannon asked the Applicants if they considered a one car garage, which Mr. Bryan said would be insufficient for garden and lawn care tools. The Applicants would like an attached garage rather than a detached one for safety purposes, especially in the winter. Mr. Bryan added that he and his wife would need to go before the New Castle Historic Commission as well, and that the proposed design of the garage would be in keeping with the character of the neighboring homes.

Ms. Goldberg inquired about a bathroom or kitchen being intended for above the proposed garage. Mr. Bryan responded that this is not in the family's plans for now, and that he and his wife would like to be able to live on the first floor and have the second floor of their home be enjoyed by guests.

Mr. Bryan then went through the five criteria for zoning relief.

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

There would be no harm to properties or their values, and no public utilities or other public safety aspects would be affected by the proposed structure.

2. *The spirit of the ordinance is observed:*

The proposal would retain the five to seven foot setback currently on the east side of the property, while not affecting neighbors' properties and their use and views. The garage would enhance the nearest neighbors' privacy, and has been supported by the Applicants' neighbors.

3. *Substantial justice is done:*

The main house was built before setbacks or cars existed. The proposal would bring the house facilities up to code. The net occupied property setback footprint would be reduced with the removal of the existing shed.

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

The garage would reduce noise and increase privacy for the closest neighbors, while preserving open space and water views. The abutters have written letters of support of the Application. Their property values would not be adversely affected, and the value of the Applicants' property would be increased.

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

The knoll, open space, and water views are key to the property use and value for the Applicants and their neighbors, and thus constitute special conditions. The Applicants seek to preserve the important family gathering area on the knoll. Alternative locations for the garage would inflict hardship on the use and value of the property, and would also be detrimental to neighboring home values.

Chair Baker then read letters in support of the Applicants' proposal from the following abutters: Jennifer Feder Kasper and Elizabeth Feder, Mark and Elisa Lacasse, AJ and Cathy Homicz, Philip and Diane Llewellyn, and Barbara Sweet. The letters noted how the abutters have been kept informed about the proposal from the beginning, and how the neighbors' opinions have been taken into consideration by the Bryans throughout the process.

Kristy Garretson, the daughter of abutter Harvey Mason, was present with her father and spoke against the proposal. She provided an unsigned letter from the Feders, dated September 26, 2018, in which the Feders rescind their previous support letter. Ms. Garretson attested that this letter was in fact from the Feders, who could not be at the meeting and only received notice of the Zoning Board meeting to discuss the proposal the previous Saturday. Ms. Garretson, speaking on behalf of Mr. Mason, echoed the sentiments in the most recent letter written from the Feders, in which they raise new concerns about the height of the proposed structure. Ms. Garretson distributed a letter describing her worry that the garage would tower over her father's neighboring home. The Feders and Ms. Garretson felt that the proposal would negatively impact neighbors' privacy and property values, and would block the sunlight during parts of the day. Mr. Mason added that his main concern would be the disruption in light, which would destroy the optical effect of looking at his home. He stated that he would not be as opposed to a single story structure.

Mr. Lacasse responded to these concerns, which he felt were valid. He stated that he believed the overall project would greatly enhance the value of the neighborhood, notwithstanding concerns of other neighbors. He felt that the Applicants have made a "valid effort of preserving history" while renovating the look of the home and thereby increasing its value.

Mr. Homicz spoke next, and stated that "it is not unreasonable to have an attached two story garage in the 21st century", especially in New England. He added that all houses are squished in the particular area where they live, which deserves special consideration. He reiterated that he and his wife "strongly support where the garage would be placed", and did not feel that the sun would be blocked by the proposed structure.

The Bryans commented that they were caught off-guard by the Feders' sudden change of heart. Ms. Bryan shared that she and her husband have done extensive trigonometry calculations, keeping in mind the sun direction, in order to be sure that neighbors would not be adversely affected by the proposed garage. The Bryans strongly felt that the garage would have no impact on the sunlight reaching neighboring homes, including the Feders and Masons. The Applicants added that the two "scrub trees" on the property line between the Feders are the primary source of shade. According to Mr. Bryan, one of these trees is on the Feder's property, and casts shade

into the lot. Ms. Bryan added that they hope to work with the Feders to find a solution to remove the trees and replace them, potentially with a row of hedges.

After hearing both sides present their opinions and concerns, Chair Baker weighed in. He noted that while he appreciated Mr. Bryan's calculations and effort to figure out the sun angles and shade projected, these calculations do not negate the Bryans' neighbors' concerns.

After hearing the concerns raised by Mr. Mason and his daughter, in addition to the new concerns expressed in the Feders' letter, Mr. Bryan requested to withdraw his application from consideration at this meeting, in order to work further with neighbors on a plan that satisfies all parties. Chair Baker accepted the Applicant's request to table the Application until the October 2018 Zoning Board of Adjustment meeting.

2. Approve Minutes.

The August 2018 minutes will be reviewed and amended as necessary by Board members via email.

3. Set Date of Next Meeting.

Chair Baker announced that the next Zoning Board of Adjustment meeting will be held on Tuesday, October 16th 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 9:26 p.m.

Respectfully Submitted,

Meghan Rumph
Secretary