

MINUTES OF THE NEW CASTLE ZONING BOARD OF ADJUSTMENT
Tuesday, February 23rd, 2021 – 7:00 p.m. (via Zoom)

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

Members Absent: Margaret Sofio, Alyson Tanguay.

Others Present: Thomas and Martha Bates; Pam Cullen; Rita Fusco; Michael and Ann McAndrew; Bernie Pelech, Attorney; Curt Springer.

Chair Baker called the meeting to order at 7:03 p.m. Voting members of the Board are Mr. Fitzpatrick, Ms. Goldberg, Mr. Lannon, Mr. Gardner, and Mr. Taylor. Chair Baker is an alternate.

1. Overview of Zoom Meeting checklist.

Chair Baker informed attendees that the public body is holding an emergency meeting electronically pursuant to Executive Order 2020-04, Section 8, and Emergency Order #12, Section 3.

2. Case 2021-01. Thomas and Martha Bates, owners of 36 Piscataqua Street (Map 18, Lot 30) have applied for a variance from Sections 4.2.1(3), 4.2.1(5) and 7.5.1 in order to permit remodeling of the garage to include an office on the 2nd floor.

Attorney Pelech presented on behalf of Thomas and Martha Bates. The Bates' house is a single family residence that was originally built in 1750. The property received variances several years back. The second floor space above the garage faced opposition from abutters in a previous application. The Bates withdrew this portion of the previous application and the remainder was approved. The Bates did not live at the home at that time, but live there full-time now.

The proposal is to raise the roof of the garage in order to build a home office. The addition would be a dormer style approximately 22 feet by 28 feet. There would be no expansion of the footprint of the building, and the lot coverage will remain the same. The Town Building Inspector indicated that a variance for lot coverage is needed as well. Although Attorney Pelech disagrees that this is needed, the Applicants are including it in their request before the Zoning Board. The existing structure is nonconforming because it exceeds lot coverage and building area.

Attorney Pelech went through 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:*

Raising the roof of the garage will not change the essential characteristics of the neighborhood, nor will it endanger the public health, safety, or welfare. The surrounding properties in the

neighborhood utilize the space above the garage, and many of the homes are on relatively small lots. This addition would not be out of character for the neighborhood.

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

Surrounding property values will not be diminished. Mr. Bates has met with many of the neighbors to discuss the proposal, and the reaction has been positive.

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

The property has special conditions which create the need for variances. The property is surrounded by three streets, and the existing structure is located in such a position on the lot that it creates a hardship because nothing can be done to the property without needing a variance. The existing structure is nonconforming due to its size. The use is reasonable and allowed by the zoning ordinances, and therefore there is no fair and substantial relationship between the intent of the ordinance as it is applied to this particular property. Attorney Pelech noted that not many municipalities have a building area requirement that dictates how much space one can have inside one's home based on lot size.

5. *Substantial justice is done:*

There is a substantial hardship to the Applicants if the variances are denied. The Applicants do not have a lot of livable space in the home and they would like to use the space above the garage for an office, especially during the ongoing pandemic. The hardship to the Applicants outweighs any benefit to the public in denying the variance.

Mr. Bates explained that when he last came before the Board, he was renting the property out while living in Greenland. The Bates rented the house in the summers and worked on it in the winters, as the house needed extensive repairs. Mr. and Mrs. Bates permanently moved to their home in New Castle two and a half years ago. The current proposal is the same as what was previously withdrawn when the Bates last came before the Board. They are essentially adding a dormer in the rear, which would raise the height of the roof by approximately two to three feet. The ridge will still be substantially lower than the ridge line of the house. The area will have an office and bathroom.

Mr. Lannon asked about the construction plan and if the existing garage would have to be taken down or if it would be possible to build on top of what is already there. Mr. Bates responded that he was not sure if it would be necessary to tear down the existing garage, as the foundation was not properly installed and the studs are not graded for a second floor. They will have to make modifications to the first floor to support the additional weight. He added that they have had issues with the leaking foundation, and the garage often fills with water.

Mr. Gardner asked what the additional square footage will be. Attorney Pelech stated that it will be 442 square feet. The allowable lot coverage is 2,569 square feet and the Applicants currently have 2,822 square feet. The building area would be 3,264 square feet where 2,569 square feet is allowed. Ms. Goldberg calculated that with the proposed addition, it would be 694 square feet over the permitted lot coverage.

Ms. Goldberg asked about access to the office space. Mr. Bates explained that they would primarily be walking from the house through the garage using an existing staircase. There would be a door to go through the garage and provide egress on the Salamander Street side as well. The current staircase goes up to the attic of the garage that has about 5.5 feet of space.

Mr. Fitzpatrick asked about the need for a bathroom with the office. Mr. Taylor also questioned why a full bath is necessary. Mr. Bates stated that they have no intention to use the space for anything other than an office. He has owned his business for over 30 years and has always had an office above the garage. Because of the difficulty in accessing the space with the staircase, he felt that it makes sense to have a bathroom with the office.

Mr. Gardner wondered what would happen if they have to tear down the existing structure. Mrs. Bates stated that they have to go through the Historic District anyways whether they use the existing footings or new ones. Mr. Bates added that the garage was only built in the 1960s. Ms. Goldberg asked if there is any intention to put a kitchen space in the office. Mr. Bates responded that no kitchen will be put in.

Mr. Gardner asked if any neighbors have objected. Chair Baker noted that he has not received any feedback in writing. Mr. Bates stated that he circulated the application and plans to all abutters and tried to talk to each one individually. The abutters have seemed to agree that the plan seems reasonable, according to Mr. Bates.

Ms. Goldberg requested more details about why this property is unique compared to others in the neighborhood. Attorney Pelech explained that the fact that it is bordered on three sides by streets makes it unique. The house was originally built in 1750 and has been expanded over the years, making it nonconforming for its location on the lot and the size of the lot.

Mr. Gardner asked about the maximum lot coverage and why the Building Inspector thought that this variance was needed. Chair Baker read the denial letter issued by Mr. Bookholz. Attorney Pelech responded that he did not have a discussion with Mr. Bookholz. In reviewing the Building Inspector's letter, he disagreed but also found that variances for Sections 4.2.1(5) and 7.5.1 were needed but were not mentioned in the denial letter issued by the Building Inspector. As such, Attorney Pelech decided to request all three variances.

Chair Baker opened the hearing to the public at 7:43 p.m. Michael and Ann McAndrew of 27 Steamboat Lane spoke. Mr. McAndrew stated that most offices do not have a full bathroom and would only need a half bath. Mr. Bates responded that the space is not intended to be a living space, and the design is for a stall shower, not a tub. If the design is problematic, Mr. Bates would be willing to eliminate the full bath. Mrs. Bates noted that the couple has two daughters who might want to sleep and shower there when they are home over the holidays. Ms. McAndrew stated that she did not understand why the office is needed when the Applicants have a big house. Mr. Bates explained that it would be helpful to have the office space in a more remote location to accommodate a desk and phone calls. Their house is listed as having many bedrooms, but he pointed out that many are in the attic and require a ladder to reach them. There is only six feet of headspace in these rooms. There is actually limited space inside of the house, and there are only two functioning bedrooms on the second floor.

Mr. Bates assured that there is no intention for the space above the garage to be rented out or become a VRBO. They previously rented out the house as a vacation rental to use the income to re-do the house. The intention is to recreate the space exactly as it currently looks but just slightly higher, while still maintaining the character of New Castle.

Rita Fusco of 33 Piscataqua Street spoke. She felt that the Bates are excellent neighbors, and she has no problem with the application as long as it does not scar the street.

Ms. McAndrew asked if a future owner of the house would be able to use the space above the garage for livable space. Mr. Bates stated that this is allowed by the New Castle Zoning Ordinances, so it cannot be prevented. He reiterated that he and his wife have no intention of renting the house out or selling and moving. Pam Cullen of 11 Becker Lane clarified that the Zoning Ordinance does not currently address VRBOs. She was originally opposed to the application because parking had become a hardship for Piscataqua Street. Now that the Applicants have moved in full time, she feels comfortable with the plans and finds them to be well executed. Ms. Cullen did still have concerns about parking on the street and future plans if the Bates move.

Attorney Pelech noted that if the Board has concerns about the future use of the property, they can put conditions on the approval. Chair Baker questioned whether such conditions would be enforceable. Ms. Cullen noted that a house on Steamboat Lane that had a small art studio recently sold, and the ZBA did stipulate that this space could not be used for living purposes. Chair Baker commented that an applicant would have to get a special exception for an accessory dwelling unit from the Planning Board.

Hearing no further comments from the public, Chair Baker closed the public hearing at 8:02 p.m. and opened discussion back up to the Board. Ms. Goldberg stated that she was on the fence about the hardship and what distinguishes the Bates' property from others in the neighborhood. She is concerned about use and what the Board can legally do to put a restriction in place so that the space remains an office and does not get rented out. Ms. Goldberg added that she is sympathetic to the desire for an office space separate from the house.

Mr. Lannon shared that he was on the Board when the case was originally withdrawn. He felt that the situation has changed since that time, with the Bates living in the house full time now. He stated that the actual proposed adjustment to the garage is minimal and would look essentially the same from most of the angles. Mr. Lannon did not believe that the addition would dramatically change the character of the house or neighborhood. He cautioned trying to legislate Accessory Dwelling Units as a Zoning Board and felt that the Board should avoid applying many constraints about the potential future use of the house. Mr. Lannon stated that the Board has to take the word of applicants, and how applicants want to use space is not in the specific purview of the ZBA. He is overall in support of the application, and noted that neighbors do not appear to be opposed to the proposal.

Mr. Fitzpatrick agreed with Mr. Lannon and with Ms. Goldberg's comments about hardship. He felt that Attorney Pelech made the case and was inclined to vote in favor.

Mr. Gardner stated that his concerns have been addressed and answered, and he does not have any issue with the application. He felt that Mr. Lannon summarized the case well and that it is not in the ZBA's jurisdiction to weigh in on future use. Mr. Gardner added that he agreed with Attorney Pelech that the Applicants do not need a variance for lot coverage.

Mr. Taylor believed that the case was well laid-out and if the proposal is for an office, he is in favor.

Chair Baker stated that the case meets all five criteria for zoning relief. The property is unique, and the home is fairly large but was built before the ZBA was created. He felt that the hardship criterium has been met and is in favor overall. Chair Baker acknowledged that some neighbors had reasonable concerns, and proposed making a condition that the space above the garage not be used as a dwelling. Mr. Bates responded that this would be acceptable. Chair Baker felt that the Board should grant all variances as requested.

Mr. Fitzpatrick motioned to approve the application of Thomas and Martha Bates, 36 Piscataqua Street, Map 18, Lot 30, as submitted for the reasons set out in Attorney Pelech's memorandum, with the additional condition that the new space not be a dwelling. Mr. Gardner seconded. Ms. Goldberg, Mr. Lannon, Mr. Gardner, Mr. Fitzpatrick, and Mr. Taylor all voted in favor. Motion carried unanimously.

3. Approve Minutes.

Mr. Lannon moved to accept the January 2021 minutes as submitted. Ms. Goldberg seconded. Ms. Goldberg, Mr. Lannon, Mr. Gardner, Mr. Fitzpatrick, Mr. Taylor and Chair Baker all voted in favor. The motion carried unanimously.

4. Set Date of Next Meeting.

Chair Baker announced that the next Zoning Board of Adjustment meeting will be held on Tuesday, March 30, 2021 at 7:00 p.m.

5. Adjournment.

There being no further business, Mr. Fitzpatrick moved to adjourn the public meeting. Mr. Gardner seconded. The motion carried, unanimously, and the meeting adjourned at 8:20 p.m.

Respectfully Submitted,

Meghan Rumph
Secretary