

APPROVED

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**MINUTES OF THE NEW CASTLE ZONING BOARD OF ADJUSTMENT
Tuesday, February 20th, 2024 – 7:00 p.m. (Macomber Room)**

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

Members Absent: John Fitzpatrick; Rich Landry; Alyson Tanguay.

Others Present: Ken Aspen; Terri Golter; Kevin and Kathleen Kelleher; Robert Jr. and Wendy Moores; Darcy Peyser, Durbin Law Offices, P.L.L.C.; Timothy Phoenix; Hoefle, Phoenix, Gormley & Roberts, P.A.; Bruce Scamman, Emanuel Engineering, Inc.

Chair Baker called the meeting to order at 7:00 p.m. Voting members of the Board are Mark Gardner, Ben Lannon, Rebecca Goldberg, Matt Taylor, and Chair Baker.

1. Continuation of Case 2023-12. Applicant, Moores NH Realty Trust of 2015, Robert Jr. and Wendy A. Moores, Trustees, owner of 224 Wentworth Road (Tax Map 5, Lot 12), has requested the following variances in order to permit a 540 square foot garage on the lot:

- **Article 4 Section 4.2.1. Table 1C – Side Yard setback of 10 feet proposed where 15 feet is required**
- **Article 4 Section 4.2.1. Table 1C – Rear Yard setback of 6 feet proposed where 15 feet is required**
- **Article 4 Section 4.2.1. Table 1H – Lot Coverage of 33.4% proposed where 20% is required**

Attorney Timothy Phoenix presented with Bruce Scamman of Emanuel Engineering and Applicants Bob and Wendy Moores. The application was continued after the December 19, 2023 meeting to address concerns of neighbors and the Board. Modifications have been made so the encroachments are less nonconforming. The proposal in December called for a 20 foot by 25 foot garage with a height of 20 feet. The side yard setback would be 5 feet where 15 feet is required, and the rear yard setback would be 6 feet where 15 feet is required. The lot coverage would be 35.9% where 20% is required. The new proposal has side and rear yard setbacks of 10 feet and 6 feet, respectively, and 33.4% lot coverage. The garage would be 18 feet by 30 feet with a height of 15.25 feet. This is 40 square feet larger than what was proposed in December.

Attorney Phoenix reiterated that the house is very small with virtually no storage. The original proposal called for a loft over the garage, but they have reduced the garage height to address concerns about bulking and impact on sunlight. The new garage will be one floor but longer to allow for Mr. Moores' truck and 8 to 10 feet of storage. Attorney Phoenix argued that many houses on Wentworth Road have garages tucked into the corner, so it is not unusual.

Mr. Scamman outlined the concerns heard at the December meeting, such as about the building width, the garage being too close to the property line, and the height being too tall and creating shading on the neighbors' lot. Neighbors seemed to be more amenable to a one car garage. Mr. Scamman showed the latest schematic of the garage. The loft area of about 300 square feet has

been removed. For comparison, he estimated that the existing shed that will be removed is roughly 10 feet tall.

The driveway has also been narrowed to 14 feet to reduce impervious area. The proposed garage will be three feet further away from the property line and will be two feet narrower. The garage was going to be two bays, but will now be just one bay. There will be a 10 foot wide garage door to fit Mr. Moores' pickup truck. The original design was for the garage to be 20 feet from the slab to the roof peak. Now, the garage will be a flat roof structure with a 3:12 roof pitch. The garage is designed to replicate a boat house with a taller door. The garage will use similar wooden shakes to match the architectural features of the existing house.

The proposal was originally going to increase impervious area by 0.9%, but will now decrease it by 1.6% by removing 100 square feet of driveway. The garage will be about six feet off the stone wall along the property line with the Kellehers. It will be approximately the same distance away from the lot line as the neighbors' house. The revised design has no windows on the side of the garage facing the Kellehers to respect privacy concerns. The garage will have a drip edge to allow for water infiltration, which will connect to the large infiltration area under the patio that will connect to the underdrain surrounding the building. Mr. Scamman showed the drainage calculations of peak flows and volumes. For every storm event, from a two year storm to a 100 year storm, the flow and volumes will be reduced from what exists now to what is proposed because of the addition of significant drainage structures.

Attorney Phoenix stated that the ledge in the Moores' backyard makes it difficult to move the garage further behind the house. If the garage is shifted over more, the driveway would be too tight to the house. In addition, moving the garage further into the backyard would require a longer driveway, which would increase impervious area. The garage cannot be moved closer to the main road because of the leach field in the driveway, and the sewer easement that the Aspens have. The Moores would like to maintain some backyard space, and the garage will act as a visual buffer between neighbors so they can both have private backyards. The existing privacy fence along the property line with the Kellehers is a little over six feet tall, and there are new arborvitaes along the fence that will grow to at least 10 to 15 feet in height. Attorney Phoenix felt that the existing trees behind the shed will block more sunlight than the proposed garage.

Attorney Phoenix 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:*

The purpose of the zoning ordinance is to promote the health, safety, and general welfare of the community. The proposal meets the objectives outlined in the Master Plan, in that it keeps New Castle residential and protects the unique island character. The garage will not alter the essential character of the locality.

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

An accessory building in the yard setbacks is a common occurrence on small lots. The garage will be screened by trees, and is tastefully designed to look like a boat storage area. The project preserves the sewer easement and provides significant stormwater treatment. It will increase the

value of the Moores' property and those around it. Therefore, the value of surrounding properties will in no way be diminished.

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

The existing lot does not conform to the minimum lot size, and is burdened by a sewer easement and ledge. Special conditions exist because of the placement of the existing home, the gravel driveway, and concrete disposal system under the driveway. The placement of the existing home leaves no reasonable location for the garage without the Moores' giving up their backyard. The garage will leave reasonable separation between neighbors. There is no fair and substantial relationship between the general public purposes of the ordinance and its specific application in this instance, as the project will allow adequate access to light, air, and space. The proposed use is permitted and therefore reasonable.

5. *Substantial justice is done:*

The general public will not be harmed by the proposal. There is no benefit to the public that would outweigh the hardship to the applicant. Denial of the variance will cause great harm to the Moores, as they will be unable to improve their modest home and lot with a garage that would allow for additional off-street parking and storage. This would result in an unconstitutional taking.

Chair Baker opened the public hearing at 7:45 p.m. Attorney Darcy Peyser spoke on behalf of Kevin and Kathleen Kelleher, abutters at 224 Wentworth Road. Chair Baker read a letter submitted by Attorney Peyser, which outlined the Kellehers' objections to the application and reiterated previous concerns that they had discussed at the December 2023 meeting. The Kellehers' are concerned about the bulk of the proposed garage and how that would encroach their air, light, and space. The latest proposal brings the garage further away from the shared property line, but by extending it five feet further back along the boundary, the structure will have an equal and perhaps greater negative impact on the Kellehers. The garage would be nearly one-third the size of the Moores' main dwelling, which would create a looming appearance above the Kellehers' property and therefore violate the spirit and intent of the Ordinance and the Master Plan with no commensurate hardship. The existing shed is much less looming than the proposed structure. The proposed garage will significantly block the sunlight that the Kellehers enjoy in their living room and back deck. A smaller garage positioned within the setbacks could accomplish the Moores' goals for additional off-street parking and storage, while not imposing on the Kellehers' light, air, and space to nearly the same degree.

The Kellehers are also greatly concerned about drainage, and Attorney Peyser stated that they must have some sort of recourse if the drainage plans are not maintained in practice. She would like a best management practices plan approved by and overseen annually by the Town. There is a two foot drop into the Kellehers' yard from the stonewall along the property line, and with the Moores' lot being higher in elevation, the Kellehers already have drainage issues on their lot. They are concerned about these issues being exacerbated by the addition of a 540 square foot garage. While the Kellehers appreciate the changes made to the application, they do not feel that the garage will be proportionate to the size of the lot and existing home, and compared to the Kellehers' lot and home. The ask is not fitting or proportionate to the relief being sought. A standard one car garage would be more reasonable. Attorney Peyser stated that if the Board is

inclined to grant the variances, the Kellehers request that the approval be conditioned upon the requirement that the structure never be used as living space.

Mr. Gardner asked about the drainage issues. Mr. Kelleher responded that they have a drywell and their sump pump is constantly running already. Mr. Scamman noted that if there is an overflow on the Moores' lot, it will go into the catch basin at the end of the Moores' driveway, which has been regraded so that water will flow down the driveway toward Wentworth Road, and would not impact the Kellehers. He went over the improved stormwater management onsite, including the drip edges around the house and an underdrain system where water will collect. Mr. Gardner asked how confident Mr. Scamman was that the system would work as intended. Mr. Scamman responded that he was highly confident, and the plan is probably three times the size and scope of what would normally be done for a project of this size. Even if the design does not work, they have the option to add more stone area. The grading has been intentionally changed so the water will not go across the backyard like it currently does.

Mr. Taylor asked about the height of the house to make a comparison with the proposed garage height. Mr. Scamman estimated that the house is probably 14 feet high. Mr. Gardner asked what size garage would be acceptable for the Kellehers. Attorney Peyser responded that a 14 foot wide, 21 foot long garage would be acceptable. Chair Baker pointed out that a typical one car garage is about 12 feet by 20 feet. Attorney Peyser noted that the Kellehers would like to see something more reasonable compared to the size of the house and lot.

Mr. Gardner asked for Mr. Scamman's opinion on the garage's impact on the sunlight. Mr. Scamman noted that in the summer, the sun will be coming at an angle where it should not be hitting the garage roof. The only potential shadowing would be in December when the sun is very low in the sky. Mr. Taylor agreed that the proposed garage would not impact sunlight. Attorney Peyser responded that the Kellehers' overall concern is the bulk of the garage and its proximity to the lot line. Mr. Scamman pointed out that the previous garage that was proposed in December was 800 square feet in bulk, whereas the latest proposal is 540 square feet.

Terri Golter, 17 Locke Road, spoke in support of the Kellehers. She felt that the project is too excessive compared to the lot size. She believed a one car garage would be more in keeping with the neighborhood. Ms. Golter also requested that a survey pin be placed on the lot line her mother, who lives at 238 Wentworth Road, shares with the Moores. She wanted to make sure the water runoff is directed away from her mother's home.

Ken Aspen, 252 Wentworth Road, suggested that the applicants stake out the proposed garage and have a site walk with the Board. He supported the Moores having a garage, but also supported the Kellehers' concerns about drainage and bulking.

Attorney Phoenix stated that if the garage were to be placed in the backyard outside of the setbacks, it would appear even taller because the lot gets higher in the back. While the Moores do not intend on creating living space in the garage, he does not feel that it is appropriate to condition an approval on this. Attorney Phoenix also noted that stormwater leaving the property post-construction cannot be greater in volume or speed than pre-construction conditions. He was confident that the Building Inspector would see that the Moores remedy the stormwater situation if the proposed plans do not address the issues.

Mr. Kelleher asked about the hardship driving the request. Attorney Phoenix answered that the State Supreme Court has a three-prong test to determine hardship: 1) special conditions exist because the lot is half of the minimum size required by the ordinance, and it is burdened by the sewer easement and ledge in the backyard. 2) There is no fair and substantial relationship between the general public purposes of the ordinance and its application in this instance because the air and light will not be changed by moving the garage further out of the setback, and the garage provides reasonable separation between neighbors. This is a balance of the Moores' right to have a garage versus the harm to the general public, and not just to the abutting Kellehers. 3) The proposed use is permitted and is therefore reasonable.

Ms. Moores spoke and appreciated everyone's time, and stated that they want to be good neighbors.

Hearing no further comments from the public, Chair Baker closed the public hearing at 8:34 p.m. Mr. Lannon noted that at the last meeting, the Board shared neighbors' concerns about the project being bigger than necessary, specifically having a 20 foot tall garage five feet from the setback. The size of the proposal and the proximity to neighbors were concerns. While Mr. Lannon appreciated the efforts made by the applicants to address these issues, he wondered if there was any size garage that would meet everyone's desires.

Ms. Goldberg stated that although the proposal is smaller than the original plans, it does not necessarily alleviate the concerns others have. Having lived at the house years ago, she sympathized with the Moores' storage issues. However, Ms. Goldberg was greatly concerned about the bulk of the proposed garage and she was not convinced that the hardship prong has been met. She felt that looking at the land from Route 1B, the existing shed is mostly tucked behind the house, whereas the garage will be clearly visible and will block trees. She also did not see how the garage would add privacy for the neighbors.

Chair Baker felt that the applicants made a step in the right direction, but they are not quite there. He believed that an ample one car garage would be 15 feet by 25 feet, and an 18 foot by 30 foot garage is too large. He found that the neighbors' concerns about air, light, and space being diminished are legitimate, though he was unsure if it would be feasible to have a garage that would fit within the setbacks. Chair Baker questioned whether the spirit of the ordinance is really being followed when the applicants could have a smaller garage that is less nonconforming.

Mr. Taylor was comfortable with the rear setback request, and felt that the garage could meet the side yard setback if the applicants drill into the ledge. He did find that the garage would add privacy and reduce noise in the backyard. The proposed lot coverage is less nonconforming, so he did not have an issue with that request. Mr. Taylor also stated that the drainage design is very strong and will improve everyone's situation, noting that it goes above and beyond what is needed.

Mr. Gardner found Attorney Phoenix's arguments to be convincing, but he was held up on the size of the garage and the hardship argument. He did not see how the garage would create a major issue with light and air.

Attorney Phoenix requested to withdraw the case so that the Moores do not have to appeal. This will give the applicants an opportunity to come up with an alternate design that would hopefully be acceptable to the neighbors. Chair Baker accepted the withdrawal request.

2. Appeal of Case 2024-1. The New Castle Select Board has requested a Hearing to Appeal an Administrative Decision alleging that an error was made by the New Castle ZBA on January 23, 2024. The Board will vote to determine whether to accept the Request for Hearing. If the Request for Hearing is approved, the Hearing will take place at a future time and date.

Mr. Gardner and Mr. Taylor recused themselves, as they are members of the Kittery Point Yacht Club. Chair Baker stated that the Select Board is appealing an administrative decision, and has alleged an error in the ZBA's decision to approve the dock. If the request is approved, the Board will hear the case at the next scheduled ZBA meeting.

Mr. Lannon motioned to accept the appeal and to hear the case on Tuesday, March 19, 2024 at 7:00 p.m. at the Town Hall. Ms. Goldberg seconded. Motion carried unanimously by a vote of three to zero.

3. Approve Minutes.

Mr. Lannon moved to accept the January 2024 minutes as submitted. Mr. Taylor seconded. 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 19, 2024 at 7:00 p.m. at the Town Hall.

5. Adjournment.

There being no further business, Mr. Gardner moved to adjourn the public meeting. Mr. Taylor seconded. The motion carried, unanimously, and the meeting adjourned at 8:57 p.m.

Respectfully Submitted,

Meghan Rumph
Secretary