

MINUTES OF THE NEW CASTLE ZONING BOARD OF ADJUSTMENT
Tuesday, January 26th, 2021 – 7:00 p.m. (via Zoom)

Members Present: Todd Baker, Chair, Mark Gardner, Rebecca Goldberg, Ben Lannon, Margaret Sofio, Alyson Tanguay, Matt Taylor.

Members Absent: John Fitzpatrick.

Others Present: Robert Durkee; Jeremy Eggleton, Orr & Reno; Monica Kieser, Hoefle, Phoenix, Gormley & Roberts, P.A.; Mark Rettstatt; Donna and Paul Urbanek.

Chair Baker called the meeting to order at 7:04 p.m. Voting members of the Board are Ms. Goldberg, Mr. Lannon, Mr. Gardner, Ms. Sofio, and Chair Baker. Ms. Tanguay and Mr. Taylor are alternates.

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 2020-04. Mark Rettstatt, owner of 21 Old Bay Road (Map 4, Lot 3-30), has applied for a variance from Section 4.2.1 Table 1 to permit relief from side setbacks to install an outdoor kitchen. This application was tabled at the December meeting.

Mark Rettstatt presented his application for an outdoor kitchen to include a grill, pizza oven and open burner to cook food such as lobsters. Mr. Rettstatt began digging for the project in November and checked with the Town Building Inspector, Russ Bookholz, who met with Mr. Rettstatt to review the site. Mr. Rettstatt explained that his lot is pie shaped and tapers, with the lot being much wider along Old Bay Road than along Mill Pond Road in the back. He felt that his project is reasonable in terms of protecting the town and neighboring properties, is in keeping with the spirit of the ordinance, and would add to his property value.

Mr. Rettstatt explained how his project is done with safety and his neighbors in mind. The grill will be infrared to reduce flareups, and the burner will not be under any nearby trees. The pizza oven is designed to direct heat to the front or back depending on the wind. The maximum amount of energy rating for the outdoor kitchen is 150,000 BTUs. The project will be placed on concrete and will run eight feet perpendicular to the house and 9.5 feet parallel to the house. The frame will be produced using cold rolled steel, and will be surrounded by Durock cement board and covered with stone veneer.

Mr. Rettstatt showed a video and pictures that depict the location of the project from all angles. He stated how the neighborhoods were designed around privacy and sound, and the outdoor kitchen would not be seen from neighboring yards due to eight foot tall fencing and a large Rose of Sharon that would hide most of the kitchen. Mr. Rettstatt submitted a letter signed by his

neighbor, Linda Patchett, who was in favor of the project. The letter was signed by several other neighbors, all of whom support the proposed outdoor kitchen. Steve Briggs, who is on the neighborhood aesthetics committee, approved the project as well. Mr. Rettstatt was not aware of any abutters who opposed the project.

Mr. Rettstatt went through the five criteria for zoning relief.

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

The proposed outdoor kitchen would not be contrary to the public interest.

2. The spirit of the ordinance is observed:

The spirit of the ordinance is observed. The project would not harm the aesthetics of the neighborhood or the Town.

3. The values of surrounding properties are not diminished:

The proposal would increase Mr. Rettstatt's property values and would not negatively affect neighboring property values. He will be doing most of the work himself.

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

The application of the ordinance is unnecessary in this case. There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application to the property.

5. Substantial justice is done:

Substantial justice is done because the project is very reasonable, it has limited visibility, and does not impact any neighbors.

Mr. Rettstatt clarified that the relief requested is for 13 inches at one point and four inches at another point from the fence along with the Patchetts.

Chair Baker closed the public session at 7:34 p.m. and opened discussion to the Board. Ms. Goldberg stated that she felt the proposal is very reasonable and appreciated that all of the neighbors were very supportive of it. She struggled with hardship when determining whether to grant the variance. Mr. Lannon agreed and felt that the proposal is reasonable and a minimum request. He would have liked to have an exact measurement to the survey line, but pointed out that it seemed reasonable to not put the outdoor kitchen too close to the house for public safety reasons. He stated that it would be a harder sell if there were objections from neighbors. Mr. Gardner noted that the plan was well thought out. He felt that any hardship issue was overridden by the fact that the kitchen would not be too close to the Applicant's house.

Ms. Tanguay did not think that the request was burdensome and found it to be reasonable, but she shared Ms. Goldberg's concerns with hardship. She pointed out that there is no concrete measurement with the property line and no consulting with the tax maps, and was concerned about what kind of precedent this may set. Ms. Sofio felt that literal enforcement of the ordinance would result in unnecessary hardship in this case. Mr. Taylor agreed that it would be preferable to have a survey, but did not think it was detrimental in this case.

Chair Baker commented that Mr. Rettstatt seemed like a very reasonable citizen and that his case is strong on all five criteria. The first four criteria are easily met in Chair Baker's opinion. In terms of hardship, the proposed use is reasonable and there is no fair and substantial relationship

between the general public purposes of the ordinance provision and the specific application to the property. The neighbors are all in favor of the project as well.

Ms. Goldberg asked about other permitting requirements. Mr. Rettstatt replied that he will need to put in an underground gas line 18 inches below grade that will sit on sand. He has consulted with an electrician as well who will need a permit. Combustibles have been taken into account with the construction materials. The grill manufacturer guidelines indicate that the grill can be placed within three feet of the house, though Mr. Rettstatt would locate it further away.

Mr. Lannon motioned to approve the variance as requested for Mark Rettstatt, owner of 21 Old Bay Road (Map 4, Lot 3-30), with encroachment of no more than 13 inches into the side yard setback. Mr. Gardner seconded. Ms. Sofio, Ms. Goldberg, Mr. Gardner, Mr. Lannon and Chair Baker all voted in favor. Motion carried unanimously.

3. Request for rehearing Case 2020-03. Paul and Donna Urbanek have requested that the ZBA rehear and reconsider Case Number 2020-03. At this meeting, the ZBA will consider this request and decide whether to grant the rehearing. If granted, the rehearing would occur at a future date.

Voting members for the Urbaneks' request for rehearing are Chair Baker, Mr. Lannon, Mr. Gardner, Ms. Goldberg and Ms. Tanguay. Ms. Sofio recused herself as she is a member of the New Castle Planning Board.

Chair Baker read the entirety of the Urbaneks' Motion for Rehearing and Reconsideration submitted by Attorney Jeremy Eggleton. He noted that Attorneys Timothy Phoenix and Monica Kieser submitted an objection on behalf of the Durkees to the request for reconsideration. Chair Baker read the subsequent rebuttal of Attorney Eggleton and a letter submitted by the Urbaneks in their entirety.

Chair Baker stated that the Board will have to deliberate and decide if there is a good reason to rehear the case.

Ms. Goldberg asked what the current status of the NHDES application is. Attorney Kieser responded that her understanding is that the application has received another continuance and is still under review. She believed that an extension request had been submitted to the DES. Ms. Goldberg commented that she read through the documents very carefully multiple times and she did not see any new evidence that changes her opinion about the original decision. She did not recognize any kind of technical error or mistake. Ms. Goldberg felt that the standards have not been met given the limited scope for the request for rehearing.

Mr. Lannon stated that he was in a similar position and did not know if the request met the standard for rehearing.

Mr. Gardner did not see anything new that would change his mind. He stated that the request for rehearing seemed to be a rehash of what has been heard before. Mr. Gardner felt that the real issue is whether DES will issue the permit for the dock. He pointed out that DES may be the

place where the Urbaneks could seek remedy. Mr. Gardner concluded that he would not grant the motion to reconsider.

Ms. Tanguay did not see any new information that would compel her to rehear the case. She noted that she had questions about the nature of the Town's interface with DES. Ms. Tanguay stated that she would deny the request to rehear the case and hopes that the Applicants are able to get a satisfactory response from the DES.

Mr. Taylor agreed with other Board members' comments and did not find a reason to rehear the case.

Chair Baker also agreed with comments from the other Board members. He explained that while he understood that the Urbaneks are unhappy, he did not feel that he has been given any information to lead him to a different decision.

Mr. Gardner motioned to deny the Motion for Rehearing, finding that there has been no significant new material that would warrant the granting of a rehearing. Ms. Goldberg seconded. Mr. Lannon, Mr. Gardner, Ms. Goldberg, Ms. Tanguay and Chair Baker all voted in favor. The motion to rehear the case was denied.

4. Approve Minutes.

Mr. Gardner moved to accept the December 2020 minutes as drafted. Mr. Lannon seconded. Ms. Goldberg, Mr. Lannon, Mr. Gardner, Ms. Tanguay, Ms. Sofio, Mr. Taylor and Chair Baker all voted in favor. The motion carried unanimously.

5. Set Date of Next Meeting.

Chair Baker announced that the next Zoning Board of Adjustment meeting will be held on Tuesday, February 16, 2021 at 7:00 p.m.

6. Adjournment.

There being no further business, Mr. Lannon moved to adjourn the public meeting. Mr. Gardner seconded. The motion carried, unanimously, and the meeting adjourned at 8:26 p.m.

Respectfully Submitted,

Meghan Rumph
Secretary