

**APPROVED**

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**MINUTES OF THE NEW CASTLE ZONING BOARD OF ADJUSTMENT  
Tuesday, October 24<sup>th</sup>, 2023 – 7:00 p.m. (Town Hall)**

**Members Present:** Todd Baker, Chair; John Fitzpatrick; Ben Lannon; Alyson Tanguay; Matt Taylor.

**Members Absent:** Mark Gardner; Rebecca Goldberg; Rich Landry.

**Others Present:** Shannon Alther, TMS Architects; Randy Bryan; Kris and Stewart Hanna; Charles Hoyt, Charles Hoyt Designs; Timothy Phoenix, Hoefle, Phoenix, Gormley & Roberts, P.A.; Luis Rivas; Alex Ross, Ross Engineering, LLC; Paul and Donna Urbanek.

Chair Baker called the meeting to order at 7:05 p.m. Voting members of the Board are Mr. Fitzpatrick, Mr. Lannon, Mr. Landry, Ms. Tanguay, and Chair Baker.

**1. Case 2023-07. Applicants Stewart and Kris Hanna, owners of 57 Oliver Street (Tax Map 16, Lot 28) have requested a variance from Article 4 Section 4.2 Table 1 Row C to permit the removal and replacement of an existing two bay garage (set 9 inches from the property line where a 15 foot setback is required) with a deeper garage that will have more volume within the setback.**

Shannon Alther of TMS Architects was present with Applicants Stewart and Kris Hanna. Mr. Alther discussed the project plans, which calls for a 30 foot by 28 foot, two car garage to replace the existing 19.5 by 19.5 foot, 1.5 car garage. There will be a covered deck to connect the garage with the house. The garage will be in the same westerly location, which is within the 15 foot setback. The existing garage is nine inches from the property line. The applicants are seeking to increase the depth of the garage so that the renovated garage has more volume within the 15 foot setback.

Mr. Alther stated that they have letters of acceptance from neighbors, and that the Hannas went to all neighbors to discuss the project beforehand. The applicants will be going before the Historic District Commission next week. The new garage will be similar to the existing garage in appearance with wood sliding doors, and will be in keeping with the existing architectural style of the main house. The Hannas plan to make the upper door bigger and add glass to the existing cupola.

Mr. Alther went over the lot calculations. The existing lot coverage is 17.1%, with the proposed being 18.9%, which is still under the maximum allowed coverage of 25%. The site will remain under the maximum buildable area allowed, which is 4,674 square feet. The existing house footprint is 3,428 square feet, and the proposed is 3,496 square feet. Ms. Tanguay had questions about the building area calculations and wanted to know if the building area conforms with the requirements. Mr. Alther confirmed that he went through these calculations with Building Inspector Russ Bookholz.

Chair Baker asked if the applicants will demolish the garage all the way to the ground. Mr. Alther confirmed that they will. Chair Baker inquired about alternate places for the garage to be

located, especially since the lot is fairly large. Mr. Alther responded that moving the garage eastward to be outside of the setbacks is not feasible due to the existing house location and the lack of space given the lot's tight and narrow characteristics. He showed the 250 foot wetland buffer setback on the plans, which cuts across the eastern portion of the house. The proposed work is outside of this buffer. Mr. Alther explained that the lot slopes decently toward Cape Road and is steep, which would require regrading. The rear of the lot has lots of ledge. It makes the most logical sense to keep the garage in the same area as the existing garage, since it is close to the entrance to the house and right next to the existing driveway. Mr. Alther did not believe that they would need to break into the ledge for the construction. Mr. Taylor asked how long ago the garage was last updated. Mr. Alther responded that it was about seven to eight years ago.

Ms. Tanguay wondered whether a 30 foot deep garage is necessary, and asked whether the nonconformity needed to be increased in the back of the garage. Mr. Alther responded that they looked at this possibility, but it would not be feasible given the Hannas' storage needs for bikes, kayaks, etc. Mr. Hanna added that they wanted to maintain the ocean view for neighbors, so they are putting a propane tank underground.

Mr. Taylor asked about the plan for the space above the garage. Mr. Alther confirmed that it will not be livable space, and will be an attic space for storage with a small, spiral staircase so as to allow the maximum amount of space on the first floor. The storage on the second floor will be 16 feet by 30 feet, so it will be smaller than the first floor area.

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

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

The proposal allows for more functional space, including a work area for Mr. Hanna.

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

The lot is challenging in its dimensions, slopes and ledge, and the proposal allows for a better use of the garage.

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

The Hannas will have a more usable garage, which maintains the historic architecture of the neighborhood and will increase neighborhood values as a whole.

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

There is no fair and substantial relationship between the general purposes of the ordinance and its application in this case. The proposed use, a two car garage in New Hampshire, is reasonable. The lot is long and narrow, with only a small buildable area outside of the 250 foot buffer. The proposed garage is outside of this buffer and is located in the most reasonable place based on characteristics of the lot.

5. *Substantial justice is done:*

The proposal allows for a new garage that is more functional than the existing garage. There is no benefit to the public in denying the variance that would outweigh the hardship to the Hannas.

Chair Baker opened the public hearing at 7:30 p.m. Chair Baker read letters in support from Susan Chase, 7 Cape Road, Jeffrey Hughes, 47 Oliver Street, Elaine Nollet and Lucille and Jerry Marvin, 56 Oliver Street, and Marjorie and William Smith, 15 Cape Road.

Mr. Taylor asked about the overhangs and wanted to make sure they would not be more than nine inches so as to prevent water from going into the neighboring lots. Mr. Alther confirmed that this would be the case.

Hearing no further comments from the public, Chair Baker closed the public hearing at 7:34 p.m. Ms. Tanguay thought the project was a contextual and reasonable proposal in general. She took a little bit of issue with the dimensions of the proposed garage. She also discussed building area and if the second floor square footage of the garage is counted in the maximum allowed building area. Ms. Tanguay would like to look further into the building area and lot coverage calculations.

Mr. Lannon understood the challenges of the building area calculations, but felt that the ZBA's position needs to focus on the setbacks and not on the calculations. The Board must look at what the Building Inspector says is needed for a variance. From a zoning perspective, Mr. Lannon found the request to be reasonable. He acknowledged that it is important to pay attention to lot coverage issues. For him, the setback issue in this case was fairly minor.

Mr. Fitzpatrick had similar questions to Ms. Tanguay, but noted that the Board must rely on what Building Inspector Bookholz laid out for what variance is needed. He felt that as presented, the applicants did a good job of minimizing disruption, preserving neighbors' views to the ocean and eliminating windows that look into the neighbor's home. Mr. Fitzpatrick was in favor of the request.

Mr. Taylor felt that this had the perfect setup for an ADU in the future, which was a concern of his. The applicants stated that they had no issue with making this a restriction on the approval.

Chair Baker went through the five criteria. The variance is not contrary to the public interest, and the spirit of the ordinance is observed. The basic zoning objectives of setback requirements are to provide privacy and access for emergency services. Chair Baker acknowledged that nine inches is very close to the property line. He did not believe that granting the variance in this instance would alter the essential character of the neighborhood. It would not threaten public health, safety, and welfare. Substantial justice is done, as the loss to the applicant if the variance is denied is greater than the gain to the public. The value of surrounding properties will not be diminished considering that all abutters submitted letters in favor of the proposal. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship. The property has special conditions that distinguish it from others. There is no fair and substantial relationship between the general public purposes of the ordinance and its specific application in this case. Chair Baker agreed that the slope of the lot made it difficult to find an alternate location for the garage. Mr. Lannon and Mr. Taylor agreed, and noted that the applicants are working with the existing structure location and the driveway. If the existing structure was not there, the view would be different. Chair Baker also found that the proposed use for the garage for storage and work space is reasonable.

Mr. Fitzpatrick motioned to approve the application of Stewart and Kris Hanna, owners of 57 Oliver Street, Map 16, Lot 28, as submitted, having met the five criteria for zoning relief for a variance from Article 4 Section 4.2 Table 1 Row C to permit the removal and replacement of an existing two bay garage with a deeper garage that will have more volume within the setback, with the following conditions: 1) proposed addition is not to be used for residential purposes, and 2) approval from all relevant boards is granted. Mr. Lannon seconded. Motion carried unanimously.

**2. Case 2023-08. Applicants Luis Rivas and Valeria Rienzi, owners of 35 Grist Mill Lane (Tax Map 11, Lot 23) have requested the following variances: 1) from Section 4.2 Table 1F to expand a non-conforming structure that is proposed to be 33.06 feet high where 32 feet is permitted; 2) from Section 4.2 Table 1I to allow a proposed maximum building area of 5,707 square feet where 5,148.25 square feet is permitted and 3,724.5 square feet is existing; and 3) from Section 7.1.2 to expand a deck within the 100 foot buffer of the Highest Observable Tide Line.**

Attorney Tim Phoenix presented with engineer Alex Ross, architect Charles Hoyt, and Applicant Luis Rivas. Chair Baker disclosed that he has worked with Attorney Phoenix and Alex Ross, but he did not believe that this would impact his decision in this case. Ms. Tanguay and Mr. Taylor added that they have separately worked with Attorney Phoenix and Mr. Ross, but are able to remain impartial in hearing this case.

Attorney Phoenix stated that the applicants own in-fee all of Grist Mill Lane, and the rest of the lots have easements across the road. This is all part of the same deed, but are separate parcels. If the applicants merged all of their parcels together, Attorney Phoenix argued that they could construct an even bigger house. Mr. Ross noted that the site plan shows only one of the four parcels owned by the applicants.

The lot containing the existing house is fairly long and narrow, with the house toward the rear of the lot, close to Mill Pond. The house was constructed in 1985 and has a walk-out basement plus two floors and an accessory apartment, which is accessed through the garage. There is an incorporated garage, deck, gravel patio and a long impervious driveway. The house is burdened by wetland and shoreland setbacks from the Piscataqua River and a fifty foot wetland buffer from a small wetland at the front left corner of the lot. There is a significant drop in grade from the front of the house at elevation 17 to the rear of the house, at elevation 11. The highest roofline is over the existing garage at 33.06 feet from the lowest grade. The Town Ordinance measures height from the lowest point, so a height variance is requested to raise the roof height so it is uniform across the house, where part of the house is currently lower.

The applicants are seeking to renovate and expand the existing home and accessory apartment. Only the porches and deck are proposed to be within 100 feet of the Piscataqua River highest observable tide line. The applicants propose to expand the rear porch and construct a front porch within the 100 foot wetland buffer, and convert a substantial portion of the existing impervious asphalt driveway to a pervious surface. Attorney Phoenix explained that the applicants seek to create more basement space by converting 695 square feet which is currently slab on grade. The

basement will remain unfinished. The applicants are asking for 558 square feet over the maximum allowed building area.

Chair Baker asked about the variance request from Section 7.1.2 for the nonconforming portion that is being expanded. Attorney Phoenix responded that since the deck is within the 100 foot setback, a variance is needed. The proposed deck will add 345 square feet. There is currently no porch across the front of the house, and nearly the entire existing house is within the 100 foot setback. Mr. Ross noted that they have met with the Conservation Commission and will be applying for shoreland and wetlands permits from NHDES. They will also work on installing wetland buffer plantings per the request of the Conservation Commission.

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 purposes of the zoning ordinance include keeping New Castle residential, protecting the shoreline, preserving the heritage and architecture of buildings, and minimizing high density development. Granting the variances in this case would not threaten the public health, safety, and welfare. The project includes a stormwater management plan, where there is not currently one in place. The impervious lot coverage will be reduced despite the house addition, and the house will appear well under 33 feet from the street given the slope of the lot and how the house will sit far back from the right-of-way. The home will be code compliant. There are numerous other homes in New Castle that have been renovated to be more functional in design. The essential character of the locality will not be altered.

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

The new home is designed tastefully and will look better, thereby increasing the property value of the applicants' home. The renovation will give the house a more symmetrical structure by matching the roof height. The project will in no way diminish surrounding property values.

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

Special conditions exist that distinguish the property from others in the area. The applicants own the right-of-way to Portsmouth Avenue, but cannot use this area in the maximum building area calculations. In addition, the property is burdened by the 100 foot and 50 foot wetland buffers, which cut one-third of the lot. The steep grade toward the water artificially reduces the permitted height of the building. Any expansion of the home will require similar relief. Although the building coverage requested is a 10% increase over what is permitted, more than 60% of this coverage is because of the expanded basement, 50% of which has to be counted in the building area calculations. The proposed use remains residential, which is permitted and therefore reasonable.

5. *Substantial justice is done:*

There is no benefit to the public in denying the variances that would outweigh the hardship to the applicants. The applicants are constitutionally entitled to the use of their lot as they see fit, including the renovation of the existing home to create a more functional living area for the primary residence and accessory unit. The renovated home will match the existing garage height,

and the additions of the porches and dormers are in keeping with a coastal New England home. From the street, the house will appear as a two-story building well under the maximum allowed height. A 500 square foot increase in building area will not be noticeable from any angle given the large lot size.

Chair Baker opened the public hearing at 8:25 p.m. Paul and Donna Urbanek, 49 Laurel Lane, spoke. They stated that Mr. Rivas had spoken with them last week, and they think the design is beautiful. However, the proposal will greatly impact the Urbaneks' view of the water and would affect the light coming into their home. The master bedroom currently has a sunset view, which the proposed project would eliminate. In addition, the Urbaneks have privacy concerns, as the side of the applicants' house facing the Urbaneks would go from having three windows to 14.5 windows, which would only be ten feet away. The Urbaneks would also see the deck from their house, which they do not currently see. Mr. Urbanek added that he is concerned with the amount of impervious surface change and having even more water running onto their lot. Ms. Urbanek expressed concern about the roof height of the garage. Mr. Hoyt confirmed that the roof height of the garage will be approximately 4.5 feet lower than the height of the rest of the house.

Randy Bryan, 34 Wentworth Road, spoke as a friend of the Urbaneks. He felt that the issue comes down to what is allowed and what is requested. He questioned whether the hardships are sufficient to justify the variances requested. Attorney Phoenix responded that this testimony should not be considered since Mr. Bryan is not directly impacted by the project because he does not live in the applicants' vicinity. Attorney Phoenix added that he understands the concerns about privacy and water views. However, the number of windows the applicants seek to use does not require a variance. Regarding the Urbaneks' concerns about the impervious surface, this is actually being decreased from 23% to 19%, and there will be a stormwater management plan.

Mr. Rivas spoke and stated that he is looking forward to renovating the home. He thought the house would be kept in the same footprint. He tried to meet with all abutters, but some were not home. Mr. Hoyt noted that the proposed design is in keeping with a period design cape, and will have the same proportions as other houses.

Chair Baker read a letter in support of application from Janet Sylvester and Scott Pettis, 25 Grist Mill Lane. They are the closest abutters and cited their appreciation for the applicants' willingness to work with the existing structure.

Hearing no further comments from the public, Chair Baker closed the public hearing at 8:47 p.m. Mr. Taylor struggled with much of the application. While he found the front design beautiful, it is bigger than what the ordinance allows based on the existing lot. Mr. Taylor felt that DES will have comments about water runoff because of the large increase in the volume of the house. He advised that if the applicants can avoid needing variances, they should do so.

Mr. Fitzpatrick stated that the building ordinance exists to prevent overbulking and maintain light and air. Given the proximity of the Urbaneks' home to the applicants, in looking at the view from the right, he felt that would be a massive change from what exists. Mr. Fitzpatrick was not in favor of granting the building area variance in particular.

Mr. Lannon agreed that the aesthetics of the proposed home are great. The height change would be relatively small, in his opinion, and made sense given the lay-out of the proposed house. The deck request did not present a major issue for Mr. Lannon, as it is based on the location with the tideline setback. He found that the request to go 10% over the allowed building area was a huge ask, particularly given the sensitivity around building size and area throughout New Castle. Mr. Lannon believed the ordinances are fair as they are written, and felt that the whole project could be made slightly smaller and still fit within the building area on parcel 1.

Ms. Tanguay asked if there is another way the project could be done. She agreed with Mr. Lannon that some minor tweaks could be made to shave off some square footage and bring the applicants closer to something that the ZBA may approve. She wondered if the front porch and rear deck, or the garage area, could be reduced. Ms. Tanguay stated that the change in building area being requested is significant, and there are other ways to accomplish what the applicant is looking for.

Chair Baker stated that the plan must minimize to the greatest extent possible the impacts on the shoreline. Limiting lot coverage and building area avoids the sense of overcrowding. He also felt that the plan could be revised to make it less nonconforming. Attorney Phoenix requested that the Board vote on the individual variances, but Chair Baker preferred not to do so given that the whole plan should be reworked. Chair Baker added that he did not believe it would be very easy to merge the lots like Attorney Phoenix had implied, given the easement issues with accessing the right-of-way.

Mr. Fitzpatrick motioned to deny the application of Luis Rivas and Valeria Rienzi, owners of 35 Grist Mill Lane, Map 11, Lot 23, having not satisfied the five criteria for zoning relief for variances from 1) Section 4.2 Table 1F to expand a non-conforming structure that is proposed to be 33.06 feet high where 32 feet is permitted; 2) Section 4.2 Table 1I to allow a proposed maximum building area of 5,707 square feet where 5,148.25 square feet is permitted and 3,724.5 square feet is existing; and 3) Section 7.1.2 to expand a deck within the 100 foot buffer of the Highest Observable Tide Line. Ms. Tanguay seconded. Motion carried unanimously.

### **3. Approve Minutes.**

Mr. Lannon moved to accept the June 2023 minutes as written. 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, November 28, 2023 at 7:00 p.m. at the Town Hall.

**5. Adjournment.**

There being no further business, Mr. Taylor moved to adjourn the public meeting. Mr. Fitzpatrick seconded. The motion carried, unanimously, and the meeting adjourned at 9:06 p.m.

Respectfully Submitted,

Meghan Rumph  
*Secretary*