

**MINUTES OF THE NEW CASTLE ZONING BOARD OF ADJUSTMENT
Tuesday, November 28th, 2023 – 7:00 p.m. (Town Hall)**

Members Present: Todd Baker, Chair; John Fitzpatrick; Mark Gardner; Rebecca Goldberg; Rich Landry; Matt Taylor.

Members Absent: Ben Lannon; Alyson Tanguay.

Others Present: Stephen Byrne; John Chagnon, Ambit Engineering, Inc.; Mat Cummings, Cummings Architecture & Interior Design; Norman Dundridge, Cummings Architecture & Interior Design; Patricia and Bob Hickey; Etoile Holzaepfel; Monica Kieser, Hoefle, Phoenix, Gormley & Roberts, P.A.; Karen and Ed Kinnaly; Phyllis Stibler; Brian Terkelsen.

Chair Baker called the meeting to order at 7:02 p.m. Voting members of the Board are Ms. Goldberg, Mr. Taylor, Mr. Gardner, Mr. Landry, Mr. Fitzpatrick, and Chair Baker.

1. Case 2023-09. Applicant Patricia Hickey, owner of 46 Locke Road (Tax Map 11, Lot 8) has requested a variance from Article 4 Section 4.2.1 Table 1 Building Area, to permit construction of a dormer, which will increase the building area by 81 square feet. Existing building has 4,048 square feet where 4,129 square feet is proposed and 3,598 square feet is allowed.

Patty Hickey presented her proposal to add a dormer to the second floor at front elevation, which will add 81 square feet to the building area. The dormer will not change the footprint of the house, and would allow safety egresses to rooms, which the house does not currently have. The dormers will also allow more headroom and light, and would be visually appealing. There would also be a few additional windows where there is currently roof to bring in more light.

Ms. Hickey went through the five criteria for zoning relief.

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

The project will not violate the ordinance's zoning objectives to protect the health, safety and welfare of the community.

2. The spirit of the ordinance is observed:

The slight addition inside of the existing footprint will be code compliant and safer with proper headroom.

3. The values of surrounding properties are not diminished:

The neighbors are in support of the project. The proposal will not decrease property values.

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

The small increase of 81 square feet will make the space functional and compliant, and not allowing this would result in unnecessary hardship to the applicants.

5. *Substantial justice is done:*

Substantial justice would be done by granting the variance because it would allow the applicants to occupy a functional and code compliant home while creating more light.

Mr. Fitzpatrick asked if there would be any other changes besides the added dormer. Ms. Hickey confirmed that the dormer is the only structural change, and they will be replacing roofing and will paint the house. Ms. Goldberg asked if there was an alternative that would be compliant with zoning requirements. Ms. Hickey responded that there is no alternative because in order to get the headroom and comply with codes, it is necessary to bump out the space. The space is currently used as a bedroom, and will be more functional with the dormer.

Chair Baker opened the public hearing at 7:08 p.m. and read letters received from abutters. Jane Lannon, 55 Locke Road, wrote in support of the application. She lives across the street from the applicant and had no objections to the proposal. Kathy Hollister and Michael Danielski, 35 Locke Road, submitted a letter in support of the project as well.

Hearing no further comments from the public, Chair Baker closed the public hearing at 7:10 p.m. Mr. Fitzpatrick felt that this is a reasonable proposal. It is only an 81 square foot increase over the maximum allowed building area, and the footprint will not be changed. This is not the kind of addition that the building area regulations are meant to stop. It is not creating a sense of being overbuilt or crowding in the neighborhood. Mr. Fitzpatrick was in favor of the application. Mr. Landry felt that the proposal meets the intent of the ordinance and does not result in any overbuilding of the lot. Mr. Gardner agreed and stated that it is not a big request. Mr. Taylor commented that it will result in less than a three percent increase in building area, and he was in favor. Ms. Goldberg was in favor as well and agreed with all comments. Chair Baker felt that all five criteria for zoning relief have been met sufficiently.

Mr. Fitzpatrick motioned to approve the application of Patricia Hickey, owner of 46 Locke Road (Tax Map 11, Lot 8) as submitted, having met the five criteria for zoning relief from Article 4 Section 4.2.1 Table 1 Building Area, to permit construction of a dormer, which will increase the building area by 81 square feet. Mr. Gardner seconded. Motion carried unanimously.

2. Case 2023-10. Applicants Stephen Byrne and Brian Terkelsen, owners of 41 Spring Hill Road (Tax Map 4, Lot 6), have requested a variance from Article 4 Section 4.2.1 Table 1 Building Area, to permit construction of a roof over a permitted deck, which will increase the building area by 312 square feet. Existing building has 3,726 square feet where 4,038 square feet is proposed and 3,832 square feet is allowed.

Mr. Fitzpatrick is recusing himself from this hearing, as he is a direct abutter and his wife has submitted a letter in support of the application. Ms. Goldberg is also recusing herself because she lives in the neighborhood. Chair Baker stated that the applicants are entitled to a board of five, but will only have four voting members. Mr. Terkelsen confirmed that he wished to proceed with the hearing.

Mr. Terkelsen stated that he and Mr. Bryne bought the property in 2019 and have lived there since that time with the intention of rebuilding. They received a building permit in April 2023.

They are in the process of building a two story colonial home with a rear deck, and rebuilding a preexisting, nonconforming two car garage on the property. The applicants hope to cover the permitted rear deck with a fixed roof, which will exceed the maximum building area by 232 square feet, or six percent, and the maximum lot coverage by 24 square feet, or 0.2 percent. The rear deck will be 26 feet by 12 feet.

Mr. Terkelsen explained that at the time of applying for the building permit, a covered deck was intended. In May, a last minute adjustment made by surveyor Alex Ross resulted in a smaller lot area, which reduced the allowable building area from what had been used in the calculations for the design of the home. The Building Inspector advised to separately apply for a variance to cover the deck. Mr. Terkelsen emphasized that they are not changing the footprint of what was permitted in April. The house was designed with a covered deck because of the way the house faces, and to allow the applicants to be able to age in place long-term by having a ramp installed in the back of the house. The intention is to create a safer and better way to enter the home. The rear deck is the only leeward entrance to the home during nor'easter storms, as the property's orientation leaves the front of the home exposed. The covered deck will provide permanent protection from storms and allow for sun protection and reduced thermal gains.

Mr. Terkelsen 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:*

A fixed roof over the permitted deck will not alter the character of the neighborhood. The property will continue to be a single-family residence, and the project will not increase the occupancy capacity of the home. The proposal will not adversely impact the health, safety, or welfare of the community.

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

The construction of a covered deck will not diminish the value of surrounding properties. A covered deck will enhance the home being built and in turn, the neighboring values. The value of surrounding properties is being positively impacted by the new construction to replace the previous, poorly maintained 1950s cape.

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

The orientation of the lot, which faces north and east, is a hardship for the applicants that is outside of their control. The house is at the top of Spring Hill Road and experiences wind gusts and snowdrifts during storms. When designing their new home, the applicants fully intended on having a covered rear deck near the pre-existing, nonconforming garage. The late correction in lot size by the surveyor occurred after all design and engineering had been completed. The applicants had already vacated the property and the contractor was ready to begin demolition and construction. Since the garage needed to be reconstructed exactly as it sat, the applicants had no other solution than to apply for a variance to cover the deck. Nothing about the proposal will increase the massing of the house, and the deck will have no visual impact to those traveling on the road. All abutters, including those to the rear of the house, are in support of the application. Having a fixed, covered entry to the home is more practicable and safer.

5. *Substantial justice is done:*

There would be no benefit to the general public in denying the variance that would outweigh the hardship to the applicants. The rear deck is the only entrance to the home that is not facing north or east, and as such, does not experience extreme weather during storms. There would be substantial injustice to the homeowners if they were not allowed to have a safe entry to their home during stormy weather. The proposed use is reasonable and common in New Castle.

Mr. Taylor asked if the applicants are on public sewer. Mr. Terkelsen responded that they were on septic, but the new house will be tied into the sewer line.

Chair Baker opened the public hearing at 7:28 p.m. and read letters in support of the application. Paul and Mary Legere, 58 North Gate Road, were in favor of the proposal, as it will not impact their neighborhood in any way and will not increase the build area in the future. Cathy Fecteau, 50 North Gate Road, submitted a letter in support of the application as well. Kate Fitzpatrick, 48 Spring Hill Road, was in favor of the application. Carl and Jen Roediger, 51 Spring Hill Road, were in support of the requested variances. They felt that the project is in keeping with the character of the neighborhood and would not negatively impact surrounding properties. Shari Donnermeyer, 31 Spring Hill Road, submitted a letter in support, and stated that she had no objection to the proposal.

John Fitzpatrick, 48 Spring Hill Road, spoke in favor of the application. He felt that the project will not encroach into the neighboring properties. Putting a cover on the permitted deck is a very reasonable request, and he was fully in support.

Hearing no further comments from the public, Chair Baker closed the public hearing at 7:31 p.m. Mr. Taylor stated that he has no issues with the proposal. The intent makes sense and it will not increase the lot coverage. Mr. Gardner was supportive of the application, as it will allow a safe entrance to the back of the house where the front of the home is impacted by weather. Mr. Landry felt that the variances requested were acceptable based on the reason why the ordinances were written. Chair Baker was in favor as well, and believed that all five criteria have been met.

Mr. Gardner motioned to approve the application of Stephen Byrne and Brian Terkelsen, owners of 41 Spring Hill Road (Tax Map 4, Lot 6) as submitted, having met the five criteria for zoning relief from Article 4 Section 4.2.1 Table 1 Building Area, to permit construction of a roof over a permitted deck. Mr. Taylor seconded. Motion carried unanimously.

3. Case 2023-11. Applicants, the Kinnaly Family Trust of 2012, Edward and Karen Kinnaly, Trustees, owners of 26 Laurel Lane (Tax Map 16, Lot 4), have requested variances from the following:

- **Article 4 Section 4.2.1 Table 1 Building Area, to permit a renovation which will increase the building area by 1,442 square feet. Existing building has 5,537 square feet where 6,979 square feet is proposed and 4,905 square feet is allowed.**
- **Article 4 Section 4.2.1 Table 1 Lot Coverage, to permit a renovation which will increase lot coverage to 39.6%. Existing building has 46.1% lot coverage where 36.6% is proposed and 20% is allowed.**

Chair Baker recused himself because he does business with Ed Kinnaly. Mark Gardner will serve as the chair for this hearing.

Attorney Monica Kieser presented with applicants Ed and Karen Kinnaly, Mat Cummings and Norman Dundridge from Cummings Architects, and John Chagnon of Ambit Engineering. Attorney Kieser explained that the existing home is a 1.5 story, single-family, three bedroom home connected via an open breezeway to an undersized two car garage, a paved driveway, pool, patio, and a 1.5 story accessory structure. The accessory structure was converted to an Accessory Dwelling Unit by the prior owners, who received approval from the Planning Board. The Kinnalys are not interested in completing the ADU, and prefer to utilize the structure as a pool house. The applicants would like to make the garage slightly larger, enclose the breezeway, and add a sunroom in the back with other targeted expansions to the home under the existing roof lines with additional small gable dormers. The driveway will be regraded and will utilize porous pavers. The rebuilt garage and screened porch will fall within the applicable yard setbacks, and the stonewall in the front will be less than 18 inches high. The applicants have worked very hard with Cummings Architects to look at ways to increase the living area and space to achieve their goals while enhancing the architectural appearance of the small cape. Flower boxes will be added to the front windows, which will make the house more attractive. The lot coverage onsite will be reduced from 46.1% to 39.6% by converting the driveway to porous pavers, and by removing approximately 900 square feet of patio and replacing it with trees and landscaping.

Mr. Chagnon showed the existing and proposed site plans. There is currently a paved driveway to the house, which sits on the southwest side of the lot. The backyard has an extensive patio and pool. There is a small driveway added to comply with the parking requirements of the recently constructed ADU. The project involves changes to the area of the patios and replacing hard surfaces with landscaping. The applicants propose a 252 square foot, one story screened-in porch in the back. The demolition plan is to keep the primary structure but partially reconstruct it, and to remove and replace the garage. Mr. Chagnon explained that the porous paver driveway design is an engineered product, and that test pits have been done to prove that the pavers will function as intended.

Ed Kinnaly shared that he has been a resident in New Castle for 24 years, and he loves raising his family here. He and his wife bought the house the same afternoon that they saw it. They appreciated the imperfect nature of the home and wanted to turn it into something special. Mr. Kinnaly explained that the garage has always been a problem for the family, as they cannot fit two cars with bikes and garbage barrels inside. They spent considerable time working with architects to come up with a design that would fit in with the neighborhood.

Mr. Cummings showed pictures of the houses on the street and across the street. He noted that the applicants have issues with the sloped driveway and with space in the house. Because of the cape style, they do not have a full basement and lack space in the attic. The Kinnalys decided that the best location to add space would be the garage, so they propose to have a finished attic in the garage. The driveway will be lowered and regraded to be flatter. The scale of the project will be in keeping with other houses in the neighborhood, and is designed to enhance the streetscape. The house will remain a cape by not having a second floor, and most of the added square footage will be in the roof.

Ms. Goldberg asked about the breezeway. Mr. Cummings confirmed that it will have walls with added glass. Mr. Landry explained that based on the Town's zoning ordinances, the breezeway is considered to have the same square footage and massing regardless of whether it is enclosed because it is already covered.

Interim Chair Gardner requested that Mr. Dundridge explain how the proposed building area increase was calculated to be 1,442 square feet. Mr. Dundridge walked through the calculations. The garage will be four feet higher to 22.5 feet, which will still be one foot lower than the highest point of the existing main house. The garage will be approximately 10 feet wider than the existing one. Mr. Dundridge noted that the actual footprint increase is inconsequential because the square footage is mostly coming from the existing rooflines. Interim Chair Gardner asked what will be on the second floor of the garage. Mr. Dundridge responded that it is proposed to be a gym, and there will be access through the garage.

Mr. Taylor asked about the previous application for a pool house. Attorney Kieser stated that Building Inspector Bookholz had informed her that he did not have any records prior to 2018. She said that it appeared the structure was constructed and used as a pool house around 2017. The architectural plans that she was able to locate did not have impervious calculations on them, so she was unsure of what permitting was involved besides what was needed to convert the pool house into an ADU.

Mr. Fitzpatrick asked how far away the Stebbins' new house would be, as he was wondering about potential visual impacts of the project. Mr. Chagnon responded that the house is up the hill from the Kinnalys and is about 30 to 40 feet away. The applicants will also add hedging to the back, which will further block the view so massing will not be an issue.

Attorney Kieser 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 proposal is tastefully designed and will preserve the character of New Castle. The property contained ample street frontage and allows for more open space along the streetscape than other neighboring homes. The only visible increase in building area is in the carriage garage design. The project reduces overall impervious lot coverage, which will improve stormwater treatment. The objectives of the Master Plan and the authority and purpose of the Zoning Ordinance are satisfied. The proposal will not threaten the public health, safety, or welfare.

3. *The values of surrounding properties are not diminished:*
The project will in no way diminish the value of surrounding properties.

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

The property is unique in that it has 200 feet of frontage and less depth than other lots in the neighborhood. This limits expansion options for the home, and any expansion will require similar relief. The slight home expansion in the right rear of the structure does not add bulk and will not be visible from the street. The view from the street will be of a small, attractive cape

home with a two car garage. The use as a single family residence will remain. Since the use is permitted, it is deemed reasonable.

5. *Substantial justice is done:*

There is no benefit to the public that would outweigh the hardship to the Kinnalys if their request were denied. The project complies with project complies with yard requirements and is well below the 32 foot height limit. The additional living spaces will be nestled within the dormers and converted attic spaces. As such, the increased building area will not be noticeable.

Attorney Kieser commented that she has looked through past maximum building area requests in town, and it has been a topic of significant conflict in terms of what gets counted. She felt that this has not been consistently applied and interpreted because it is cumbersome and difficult to figure out.

Interim Chair Gardner opened the public hearing at 8:35 p.m. Etoile Holzaepfel, 29 Laurel Lane, lives directly across from the Kinnalys. She is very pleased with their plans, and appreciates all of the manipulations and adjustments that the architects have made to ensure the design fits in with the neighborhood. Regarding the pool house, she did not believe that it went before any boards in the past. She believes it was built in 2018 and was always intended to be a pool house, but when the previous homeowners put the house on the market, they wanted the pool house to count as living space. The previous owners never added in the two parking spaces required for the ADU, according to Ms. Holzaepfel. Overall, she found the project to be very attractive and felt that it will enhance the appearance of the home.

Phyllis Stibler, 125 Portsmouth Avenue, thought that the proposal will improve the neighborhood, and she particularly enjoyed the dormers and window designs. She was fully in support of the proposal.

Todd Baker, 23 Main Street, shared that he is close friends with the Kinnalys. He felt that it takes two things to be a good neighbor: tolerance and respect. This application is a great example of tolerance and respect when developing plans. Mr. Baker believed that all criteria for zoning relief have been met.

Attorney Kieser read through the letters received from other abutters. Eric Klein and Patricia Pineda, 13 Laurel Lane, wrote in full support of the project. They felt that the design is thoughtfully conceived and will not result in an overbuilt appearance for the lot or the neighborhood. The proposed architecture and reduction of lot coverage aligns with the spirit and intent of the ordinance.

Candice and Ben Stebbins, 119 Portsmouth Avenue, appreciated the Kinnalys' commitment to maintaining the character of the neighborhood. They stated that the proposal will not only enhance the aesthetics of the applicants' property, but will positively contribute to the broader community.

Stephen and Stephanie Johnson, 21 Laurel Lane, were in support of the application, and appreciated that it will not result in an overbuilt appearance. Richard and Jan White, 37 Laurel Lane and Phyllis Stibler, 125 Portsmouth Avenue, echoed these sentiments in their letters of

support. Mark Hughes submitted an email in support of the proposal. Finally, Bette and Dave Fitts, 63 Laurel Lane, wrote in support, and cited how the proposed changes are totally in keeping with the architecture of the other properties on Laurel Lane and throughout New Castle.

Attorney Kieser read correspondence with Sherry and Rob Weston at 2 Laurel Lane. The Westons are in Florida and could not be present at the meeting, but wanted to know what work was planned on the poolside of the Kinnalys' property, as that would have the most impact on their property. Mr. Kinnaly explained that their intent was to introduce more green space in the backyard, though the landscaping design is conceptual at this point, with specifics to be determined later. He noted that they will work with the Westons on the poolside fence area.

Hearing no further comments from the public, Interim Chair Gardner closed the public hearing at 8:43 p.m. Mr. Fitzpatrick felt that this was a great application with tasteful plans that fit in with the neighborhood. When looking at the numbers in the context of the regulations, he does not see any overbulking with the proposal. The only increase in coverage will be toward the open end of the lot in the rear. He believed there were special conditions because it is a wide and shallow lot, and the applicants will be working around the existing structure. Mr. Fitzpatrick was in favor of approving the variance requests.

Mr. Landry stated that this case is a perfect example of why design cannot be controlled with just numbers. He called the presentation phenomenal because it shows why the building area ordinance in particular is very tricky. Mr. Landry acknowledged the reduction in lot coverage, and was strongly in favor. Mr. Taylor found the application to be very tasteful, and he appreciated how the architects are preserving the streetscape. He felt that the new home will fit in with the neighborhood, and was in favor.

Ms. Goldberg agreed with other members' comments. She initially thought that this was a huge ask, but in going through the facts of this particular project, she felt that all criteria have been met and supported granting the variances. Interim Chair Gardner agreed, and while he initially thought that this was a big ask, he now understood how it will not be overtly obvious that there is any overbulking because of the thoughtful architectural design.

Mr. Landry motioned to approve the application of the Kinnaly Family Trust of 2012, Edward and Karen Kinnaly, Trustees, owners of 26 Laurel Lane (Tax Map 16, Lot 4), as submitted, having met the five criteria for zoning relief from Article 4 Section 4.2.1 Table 1 Building Area and Article 4 Section 4.2.1 Table 1 Lot Coverage, to permit a renovation which will increase the building area by 1,442 square feet and the lot coverage to 39.6%. Mr. Fitzpatrick seconded. Motion carried unanimously.

4. Approve Minutes.

Chair Baker moved to accept the October 2023 minutes as amended on pages 1 and 7. Mr. Fitzpatrick seconded. 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, December 19, 2023 at 7:00 p.m. at the Town Hall.

6. Adjournment.

There being no further business, Mr. Landry moved to adjourn the public meeting. Mr. Gardner seconded. The motion carried, unanimously, and the meeting adjourned at 8:51 p.m.

Respectfully Submitted,

Meghan Rumph
Secretary