

MINUTES OF THE NEW CASTLE ZONING BOARD OF ADJUSTMENT
Tuesday, June 2nd, 2020 – 7:00 p.m. (via Zoom)

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

Members Absent: John Fitzpatrick.

Others Present: Chet and Nancy Fessenden, 97 Spring Hill Rd., New Castle, NH; Margaret Fish, 58 Spring Hill Rd., New Castle, NH; Karyn Forbes, Shaheen & Gordon, P.A., 107 Storrs St., Concord, NH; Lukas Kolm, 20 Lavenger Ln., New Castle, NH; Tom Patenaude, Tom Patenaude Homes, 2 Johnson St., North Andover, MA; Normand Ramsey, 81 Spring Hill Rd., New Castle, NH; Gary Rumph, 59 Spring Hill Rd., New Castle, NH; Bill Shaheen, Shaheen & Gordon, P.A., 107 Storrs St., Concord, NH; Richard and Janice Stanton, 68 Spring Hill Road, New Castle, NH; Guy and Pam Stearns, 22 Lavenger Ln., New Castle, NH.

Chair Baker called the meeting to order at 7:09 p.m. and 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. Voting members of the Board are Ben Lannon, Mark Gardner, Margaret Sofio, Alyson Tanguay, and Chair Baker. Ms. Goldberg and Mr. Fitzpatrick have recused themselves from the case, as they are neighbors to the Applicants.

1. Case 2020-01. Richard and Janice Stanton, owners of 68 Spring Hill Road, Map 4, Lot 22, have requested a variance from Article 4, Section 4.2.1 and Section 4.2.5 in order to allow the construction of an addition which is 305 square feet more than the permitted maximum building area.

Attorney Forbes presented the application on behalf of Richard and Janice Stanton. She was present along with builder Tom Patenaude. The Stantons are seeking a variance to be allowed to increase the density roughly 6% beyond the permitted building area as calculated by the Town Building Inspector. The Applicants were originally seeking to construct a larger addition consisting of a family room with a fireplace, a three-season room, deck and two dormers. After several meetings with the Building Inspector, they have scaled down the project to be a 28 foot by 17 foot family room, one dormer, and a smaller deck than what was previously proposed. The dormer would be on the second floor in what is presently an attic.

The Stantons' lot is one of the larger ones on the street at 0.523 acres, where most lots are 0.3 acres or less. The existing building area of the home is 4,954 square feet, and the maximum buildable area permitted for the property is calculated at 5,317 square feet. The proposed addition would add 668 square feet of building area. Therefore, the Stantons are requesting a variance for the 305 square feet of the addition that would exceed the permitted building area. This would result in an increase of less than 6% over the permitted building area.

Attorney Forbes went through the five criteria for zoning relief.

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

The proposed addition will continue the safe use of the land in a way that is acceptable to the community and neighbors. The property will continue to be used exclusively as a residence within a residential zone. Public rights will not be impacted because there will be no increase in traffic or change in traffic patterns resulting from the proposed addition. The addition will meet all setback requirements and will not increase the street view density, as it will be in the rear of the property. Granting the variance will not alter the essential character of the neighborhood or threaten the public health, safety, or welfare of the community.

2. The spirit of the ordinance is observed:

The proposed addition will not cause harm to the health, safety, or welfare of the neighborhood, nor will it change the use of the property. The addition is consistent with the relative ratios of lot size and building area of neighboring homes. There will be minimal impact to the surrounding properties, and even with the addition, the Stanton property will continue to have a large backyard. The proposal is not disproportional and is consistent with relative ratios of lot size and building area of homes in the neighborhood.

3. The values of surrounding properties are not diminished:

There will be no diminution in surrounding property values if the variance is granted. The property will continue to be used as a residence. Most of the homes in the neighborhood are a similar size to the Stantons' home but are located on smaller lots. The proposed addition will not increase the house's height and will not obstruct any abutter's view. The addition is not significant and will be located in the rear of the property, making it not highly visible. The proposal will not increase street density.

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

No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the Stanton property. The Applicants' lot is nonconforming in that it has less than the 43,560 square feet required for new construction within the R-2 District. The variance would result in an increase of less than 6% over the maximum building area permitted for their lot. The addition would be located in the rear of the property. Therefore, the proposal will not increase the front view density of the home and would not result in overcrowding or overbulking of the property. The proposed use is reasonable.

5. Substantial justice is done:

Granting the variance would result in less than a 6% increase in building area over the permitted amount. It will remain consistent with nearby properties.

Chair Baker asked if the footprint is the same as the existing deck. Mr. Patenaude stated that the current deck measuring 18 feet by 12 feet would be removed and replaced with a 28 foot by 17 foot addition, which would include a smaller deck off that. Attorney Forbes commented that it was difficult to calculate the buildable area on the lot, as the original architect had calculated a different number. Ms. Tanguay asked about lot coverage, which Attorney Forbes noted was not an issue per the Town Building Inspector.

Ms. Tanguay also inquired about the square footage of the new dormer on the third floor. Mr. Patenaude stated that the dormer increased the square footage by 56 square feet. Where the dormer would be located is currently unfinished space in the attic that the Applicants would like to finish. The builder would bring a set of windows out and push the wall out slightly to create the dormer. Mr. Patenaude noted that the dormer is already included in the current square footage of the house. The new deck would measure 204 square feet and the family room would be 408 square feet, both of which would be on the far east side of the lot.

Chair Baker opened discussion to the public at 7:52 p.m. Jeffrey and Eugenia Smith of 102 Spring Hill Road submitted a letter in support of the variance request, stating that there would be no adverse impact on them or on the neighborhood. Margie Fish of 58 Spring Hill Road also wrote a letter in support of the application. She is a direct abutter to the Stantons and felt that the addition would add value to the neighborhood. Mike and Mary-Jo Antosca of 17 Lavenger Lane wrote in support of the variance to enhance the Stantons' home. The Antoscas subsequently submitted a letter clarifying that they are offering emotional support as neighbors, but are rescinding their previous letter.

Rebecca Goldberg and Lukas Kolm of 20 Lavenger Lane spoke in opposition to the application. Ms. Goldberg submitted a statement detailing how as direct abutters, they would be detrimentally impacted by the variance. Ms. Goldberg stated that the proposed addition would negatively impact their privacy in the second floor master bedroom as well as the first floor living space, and argued that the application did not meet the five criteria for zoning relief.

Ms. Goldberg stated that the Applicants fail to establish that the requested variance is not contrary to the public interest because granting the variance would alter the essential character of the neighborhood. She felt that the proposed structure would have a detrimental effect on the conservation and protection of the island's fragile ecology by likely increasing the impervious surface area of the lot and inhibiting drainage, which could increase erosion during rainstorms. Ms. Goldberg added that the variance request would also have an adverse impact on local wildlife by minimizing their already limited habitat.

According to Ms. Goldberg, the Stantons fail to show that their proposed building expansion will not undermine the spirit of the ordinances as observed, as their property has no unique features or circumstances that would restrict its effective use. She pointed out that there are four other lots on the street that are the same size or larger than the Applicants'. Further, given the topography of the neighborhood, it is not unusual that the bulk of the Applicants' property is in the rear. Ms. Goldberg felt that allowing the proposed addition in the rear of the home would reduce her privacy as an abutter. The family room and extended deck would impact the view from her master bedroom windows and would also allow direct viewing into other rooms in her home.

Ms. Goldberg also stated that the Applicants fail to establish that granting the requested variance will do substantial justice. The proposed structure is unnecessary and without a legitimate purpose for disregarding the buildable area requirements, according to Ms. Goldberg. Granting the variance would result in substantial injustice to her family both now and in the future. She felt that there is no considerable hardship to be faced in denying the variance request, and

expressed concern about the structure permanently altering the essential character of the neighborhood for the purported benefit of family guests.

Ms. Goldberg continued to the fourth criteria for zoning relief, arguing that the Stantons fail to prove that surrounding property values would not be diminished by their proposed addition. Granting the variance would result in a diminution of her family's property value because of the great impact on the privacy of her home. She also pointed out that other property values might be affected by the overbuilding on the lot, which causes the feeling of crowding. Ms. Goldberg specified that she is troubled by the addition's appearance as a big gray mass with a black roof that would completely obstruct the view of the Stantons' next door neighbor, even if the roofline is maintained.

Lastly, Ms. Goldberg asserted that the Applicants have failed to establish a hardship that necessitates the granting of the requested variance. She felt that the Stantons' alleged hardship was created by their own choices and building design. She reiterated that there are no unique attributes to their land or circumstances that rise to the level of an undue hardship, as each New Castle resident is faced with limited living space. Ms. Goldberg stated that if the Applicants seek additional living space, they should have purchased a different home in the community or built a different structure on their current lot. She acknowledged that the Applicants could increase their living space by 300 square feet without a variance if they so desired.

Mr. Kolm, Ms. Goldberg's husband, added that they would have less of an issue with the proposal if it were not in their sightline. He expressed concern about the inherent value and impact on privacy that could result from such close quarters. He felt that it was unfortunate that the properties are what they are and are situated where they are, as his property shares a more intimate orientation with the Applicants' property than some of the other neighboring lots. Ms. Goldberg added that she and Mr. Kolm were not approached about the proposal beforehand. She expressed confusion by discrepancies between the written materials and the development plans, such as whether the structure would be at ground level. Mr. Kolm noted that he would like for the Applicants to build in accordance with the design and whatever plans are approved, so that there is a clear understanding of what the ultimate structure will look like.

Chair Baker then read a message from Pam Stearns of 22 Lavenger Lane, who stated that she did not see any reason why the Applicants should not be allowed to have the small addition to their home. She felt that the proposal does not negatively impact any abutters.

Gary Rumph of 59 Spring Hill Road spoke in support of the Application. His home has a direct view of the Stantons' property and the area where the proposed addition would go. He felt that it is striking how much more open the Applicants' property appears than the rest of the lots in the neighborhood, and the 305 square foot variance being requested would not be noticeable in light of the overall lot size. Mr. Rumph stated that most of the surrounding properties have a lot more mass compared to what is remaining in open space. He calculated that the proposed change would only result in a 1.3% increase in lot coverage, which he felt was negligible. He did not have any issue with the Stantons enhancing their property and noted that it would improve the value of their property as well as that of neighboring properties.

Attorney Forbes questioned why the Applicants were not provided with a copy of Ms. Goldberg's letter of opposition prior to the meeting. The Stantons originally applied for the variance in February and she noted that the Applicants had discussed the plans with Ms. Goldberg in the months prior to that. Attorney Forbes stated that given that she was never provided this letter of opposition, she is unable to be prepared to respond to the purported expert testimony. As it stands, the Applicants are entitled to have a 363 square foot addition on their house without needing a variance, and they are only seeking a variance for 305 square feet. She is unsure about where the confusion lies in the building plans, and commented that there was previously a plan for a basement floor with a door, but that has since been eliminated. Attorney Forbes felt that it would be fair for the Applicants to have a chance to digest Ms. Goldberg's letter and prepare a response to her allegations.

Mr. Patenaude responded to the water runoff allegations and stated that engineering hydraulics reports are done prior to submitting the application. There would be zero runoff, as any additional impervious roofline would be compensated through drainage calculations, such as using a drainage stone basin. The hydraulics report is already in the process to be started by a professional licensed engineer. Mr. Patenaude asserted that there will not be any additional water runoff issues.

Mr. Stanton commented that he had met with Ms. Goldberg on a few occasions and explained that the wall along the westerly side of his yard would be taken down to make room for the necessary equipment and appease Ms. Goldberg and Mr. Kolm. Once the construction is completed, the wall would be put back up. He felt that Ms. Goldberg had ample time to present a letter of opposition to the Stantons and that it was highly unfair and unprofessional not to do so. Mr. Stanton added that he has never had any problems with water runoff in the backyard. He noted that previous issues Ms. Goldberg has had were with the Stantons' property, which is the way that it is and has always been well maintained. He felt that he and his wife are well within their bounds to take care of their own yard as they see fit, and believes that this situation has unfortunately been made personal.

Chair Baker read a letter in support of the application from Carl and Jen Roediger of 51 Spring Hill Road. Mr. Roediger felt that the project is in keeping with the character of the neighborhood and would not negatively impact surrounding properties. He noted that Mr. Stanton has explained the project to him and outlined steps that would be taken to mitigate any disruption to abutting properties during the construction period. The granting of these variances is not contrary to the public interest, the spirit of the ordinance will be observed, and substantial justice will be done. Mr. Roediger felt that the project would not diminish the values of any surrounding properties and that the proposed use is reasonable. He believes that unnecessary hardship would result if the ordinance is enforced as written. Mr. Roediger concluded that all criteria for zoning relief have been met in his opinion.

Chair Baker opened discussion to the Board for deliberation. Mr. Lannon stated that the majority of the presentation seemed straightforward. Abutters on three of the four sides of the house are in support of the project. He felt that the proposed addition is a relatively small increase compared to similar cases, and pointed out that the Applicants have room within the buildable area to do an expansion without the Board's input, but it would not be as large as they would like. He

acknowledged that neighborly disputes often have a longer history than the project itself, which could be a factor. Mr. Lannon struggles a little with the hardship in this case in terms of the unique aspects of the property. He does not think it will be an excessively large addition for the space and neighborhood. He commented that the proposal seems to be for personal use and not for access issues or aging in place. Overall, Mr. Lannon is leaning in favor but would like to hear from other Board members regarding the hardship argument.

Mr. Gardner asked whether the case would be appealable given that the Applicants have been given the chance to rebut Ms. Goldberg's letter. Attorney Forbes replied that they are not waiving their right to appeal. Mr. Gardner is sympathetic to what the Stantons want to accomplish and does not think it is a lot to ask. However, he questioned why the Applicants could not work within the parameters of the zoning ordinance and build the 363 square foot addition that they are allowed. Mr. Gardner stated that he is sensitive to the concerns of Ms. Goldberg and Mr. Kolm and feels that the privacy concerns are legitimate. He is struggling with the hardship in this case.

Ms. Tanguay would like to see fully dimensioned plans of all floors with a code summary, as she is still unclear about the square footage numbers such as the unfinished attic area. Chair Baker stated that the Board takes the letter from the Building Inspector as true. Ms. Tanguay asked if the Stantons would be amenable to programming the basement space under the family room in such a way that the addition could be dropped and would not look into Ms. Goldberg's master bedroom. Attorney Forbes responded that the addition is not facing Ms. Goldberg's property. She stated that given the confusion over the plans, the Stantons would like to continue the case to next month.

Mr. Gardner motioned to table the application to next month to afford the Stantons the ability to respond to Ms. Goldberg and Mr. Kolm's letter. Ms. Sofio seconded. Ms. Tanguay, Mr. Lannon, Mr. Gardner, Ms. Sofio, and Chair Baker all voted in favor. The application will be taken up at the next ZBA meeting.

2. Approve Minutes.

Mr. Lannon moved to accept the December 2019 minutes as submitted. Ms. Sofio seconded. Ms. Tanguay, Mr. Lannon, Ms. Goldberg, Mr. Gardner, Ms. Sofio, and Chair Baker all voted in favor. The motion carried unanimously.

3. Set Date of Next Meeting.

Chair Baker announced that the next Zoning Board of Adjustment meeting will be held on Tuesday, July 21, 2020 at 7:00 p.m.

4. Adjournment.

There being no further business, Chair Baker moved to adjourn the public meeting. Ms. Sofio seconded. The motion carried, unanimously, and the meeting adjourned at 9:06 p.m.

Respectfully Submitted,

Meghan Rumph
Secretary