

MINUTES OF THE NEW CASTLE ZONING BOARD OF ADJUSTMENT
Tuesday, May 28th, 2019 – 7:00 p.m. (Town Hall)

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

Members Absent: Alyson Tanguay.

Others Present: Rejean Audet, 31 Oliver Street, New Castle, NH; Kevin Baum, Hoefle, Phoenix, Gormley & Roberts, P.A., 127 Parrott Ave., Portsmouth, NH; John Chagnon, Ambit Engineering, 200 Griffin Rd. Unit 3, Portsmouth, NH; Brad Jones, Stratham, NH; John Shields, 41 Mainmast Circle, New Castle, NH.

Chair Baker called the meeting to order at 7:00 p.m. and asked attendees to sign in.

Case 2019-02. Applicants Steve and Patricia Wilson of 27 Colonial Lane have requested a variance from Article 4 Table of Dimensional Regulations and Article 7 Section 7.5.1 in order to expand living space in a pre-existing, non-conforming structure.

Applicants Stephen and Patricia Wilson have requested a continuance until the next Zoning Board meeting in June. Ms. Sofio motioned to continue the case. Mr. Gardner seconded. Motion passed unanimously.

Case #2019-01. Applicant Rejean Audet of 31 Oliver Street, has requested a variance from Article 4 Table of Dimensional Regulations in order to construct a shed five feet from the side property boundary where a fifteen foot setback is required.

Rejean Audet presented an overview of his proposal. He described his lot as roughly half an acre and narrow, with all the land laying behind the house and no room in the front. There are flooding issues in the corner of the property, so a grate has been installed to mitigate water issues. A surveyor surveyed the land with Mr. Audet and it was determined that the best location for the shed would be in the corner. However, the shed would have to be moved up further than initially desired and elevated with a crushed stone bed given the flooding issues.

The shed will be 10 feet by 14 feet and will mimic the addition put on the Audets' house in 2015 and will look like part of the home. There is a singular cherry tree in the backyard that takes up a good portion of the middle part of the backyard, but the Audets do not wish to cut it down. There are also other trees on the lot that they do not want to cut down in order to construct the shed, so there is limited open space where the shed could be located. Furthermore, in the absolute rear portion of the lot, there is a bocce court installed five years ago, which impedes the back section of the yard. On the side of the house is a 500 gallon LPG tank, as well as a stonewall and big piece of granite. This leaves a swath from the bocce court to behind the tree for the only possible area where the shed can be put in. The Audets are on sewer, and they have no plans for having plumbing or electrical wires to go to the shed. The shed will strictly be used for storage.

Mr. Goldberg asked about moving the shed further into the Audets' property. Mr. Audet stated that from the neighbors' perspective, it would still be the same view, and from the perspective of the street, it would look awkward and would obscure the view of the woods behind the lot. The proposed shed location is user friendly from a functional standpoint. Mr. Audet concluded that the proposed shed location is the most logical spot for both him as the property owner and for what fits with the neighborhood.

The Applicant noted that the Deleeuws are direct abutters and do not want the shed, although the Audets were not aware that anyone was opposed to the shed before their submittal, and would have liked to discuss the plans with the neighbor beforehand. Mr. Audet commented that a neighbor on the other side was approved to install a shed last year within the side setback. According to the Applicant, he did not object in that situation, and felt that the neighbor put the shed in the best location given the lot. Mr. Audet added that most people on Oliver Street have sheds that are within property setbacks.

The Applicant then went through the five criteria for zoning relief.

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

Mr. Audet stated that his request does not conflict with anything that is already in place on Oliver Street or in the Town of New Castle. The Audets' property remains consistent with the other lots on Oliver Street, which have structures within 15 feet of the property setback.

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

The spirit of the request is to keep the look and feel of the property in harmony with the remainder of the street. Having gone through the process of incorporating the new fit to with the old when renovating their home, the Audets understand and agree with this process. They want to do what is best for the Town in the short and long term.

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

The proposed 10 foot by 14 foot frame built shed will match the addition to the Audets' home completed in 2015. The Audets understand that being in the Historic District, it is important for new additions to blend in with the neighborhood, which is the Audets' intent. Mr. Audet argued that having a garden shed such as what is being proposed will not diminish their property value or the value of neighbors' properties, as most of the neighbors already have such structures on their properties.

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

The Applicant stated that the shed will be used as storage space to make up for the potential loss in storage space in the house when the Audets expand into a portion of their home that will be converted into living space in the future.

5. *Substantial justice is done:*

The installation of the shed will bring consistency to the neighborhood. A shed that was installed last year on a neighboring lot mimics what Mr. Audet is proposing, and his shed would be moved a little further back from the street.

Chair Baker read a letter from John and Nancy Deleeuw of 17 Oliver Street. The Deleeuws could not attend the meeting but strongly object the requested encroachment on their property line. The Deleeuws object to the claims that the only suitable location for the shed is in the left rear area of the property, and state that a lot of the Audets' size has ample room for the shed to be located elsewhere. The Deleeuws feel that the Applicant faces no hardship that would require the granting of the variance.

Mr. Audet responded to the Deleeuws' letter and felt that the Deleeuws would be looking at the same view should the shed be moved over from the proposed location. Mr. Audet stated that the three largest homeowners in terms of acreage in the area of Oliver Street each have a garage or shed that is on the property line. The way and look of the proposed structure match the precedent set throughout the Island. The shed would conform to the street nicely, he argued.

Mr. Lannon acknowledged that the 15 foot setback poses a challenge when a property owner is seeking to build a shed, since the shed would usually end up having to be in the middle of the property in order to be compliant. Ms. Sofio responded that unfortunately, per zoning regulations, if the shed can be placed elsewhere on the lot and not violate setbacks, then it is not a hardship to the applicant. She agreed that there is a consistency in appearance in the Audets' neighborhood, where many properties have a shed to the side. However, Ms. Sofio felt that this type of situation is made more difficult when a neighbor specifically objects to the proposal for potential impingement on their property. Ms. Sofio commented that such a clear objection from an abutter takes away from the proposal's potential benefit to the public interest.

Ms. Goldberg noted that while the Zoning Board may have previously granted a variance for a similar situation, previous approvals do not set precedent on future cases. While she was sympathetic for the Applicant's situation, she did not feel that the Applicant demonstrated hardship, and in particular, how the property is distinguishable from other properties. She did not believe that the unnecessary hardship threshold had been met.

Mr. Lannon also commented on a previous case in which the ZBA approved a shed that was within the side property setback. He highlighted that in that particular case, the initial objection of a neighbor was able to be worked out with the Applicant and they were able to compromise. He noted that it is difficult for the Board when there is a very strongly worded letter from the most impacted abutter against the project. Mr. Lannon agreed with Ms. Goldberg in that there was no absolute hardship to the Applicant, and he felt it would be hard to defend that there was no other alternative to this situation to the particular abutter.

Mr. Fitzpatrick stated that although it is a reasonable request and he understood that people do not want to put sheds in the middle of their yards, the zoning law was not written by the Board and did not make exceptions for sheds. Where there is a vehement objection asking the Board to uphold the law that is in place, the Board does not have the ability to adjust the law; they are only able to grant a variance based on defined criteria. Mr. Fitzpatrick did not think hardship in a legal sense was established in this particular case.

Ms. Sofio agreed with other Board members, and also appreciated the Applicant's desire to comply with the look and feel of New Castle. She highlighted that there is room for the shed to go elsewhere, although it may not be the best spot. She did not feel the hardship criterion or the

spirit of the ordinance have been met, especially given the proposed dimensions. Mr. Gardner echoed Board members' comments about the ideal location of the shed, and believed there are alternative locations that could be explored by the Applicant.

Chair Baker suggested that if the Applicant would like to request a continuance, he could have time to speak with his abutter to try to find a solution that would work for both parties.

Mr. Lannon motioned to continue the case for 30 days. Ms. Sofio seconded. Motion carried unanimously.

Case 2019-03. Applicants John and Jean Shields of 41 Mainmast Circle have requested a variance from Section C-1 and C-2, from Article 4 Table of Dimensional Regulations, and from Article 9 Section 9.2.5 in order to demolish and reconstruct a home within the wetland setback and to expand volume within the front setback.

Mr. Fitzpatrick noted that he has a business relationship with Matt Banow, who drew up the proposed plans. While he did not think this would prevent him from being objective, he recused himself nonetheless.

Attorney Kevin Baum of Hoefle, Phoenix, Gormley & Roberts was present in Attorney Timothy Phoenix's absence due to a scheduling conflict. John Chagnon of Ambit Engineering presented the plans for the proposed replacement structure. The south side of the property has a distinct drainage easement and pipe which carries stormwater across the lot to a discharge point on the east side. There is also an existing sewer line that crosses the property on an easement on the southwest corner. The existing residence is roughly in the middle of the property. The house was originally developed using a subdivision that is now around 50 years old, so the setbacks were not the same as they are now.

The structure currently sits in the front setback. The site borders the marsh and has a 100 foot tidal buffer zone setback, which encompasses the majority of the lot except for the northwesterly corner, which itself is within the 250 foot shoreland zone. The current house has a one-bay garage, and the Shields would like a more traditional garage to allow for two vehicles to park there. They would like this to be at a grade that is more accessible to the structure, which will have to be raised a bit. The Shields want to put in a porous driveway, which will require extending the distance from the edge of the road to the front of the garage. Mr. Chagnon noted that part of the layout of the proposed structure and its position is to allow for the greatest distance from the road to the garage bay in order to have less of a steep slope, which is important for a porous driveway.

The structure size within the front setback is currently 30 square feet, which will be cut down to 28 square feet. However, the Applicants will be adding a story to the home, which will increase the volume. There is currently a deck inside the 50 foot buffer, which has no access to the ground. The proposal is to re-do the deck and have a set of stairs to allow access to the backyard. The current deck has a concrete pad underneath, and the proposed patio will have a porous surface material underneath.

Mr. Chagnon noted that while the Shields are asking for an increase in surface area in the 50 foot buffer zone, the Town Ordinance under Section 9.2.5(e) allows for uses permitted under the Comprehensive Shoreland Protection Act. This Act allows for accessory structures in the 50 foot setback up to 1.5 square feet of accessory structure per linear foot of resource.

The NH Department of Environmental Services (DES) has issued a Shoreland Permit for disturbance in the area outside the 100 foot setback. A Wetland Bureau Permit has also been issued for impacts in the tidal buffer zone. Mr. Chagnon also mentioned a letter from the Army Corps of Engineers stating that they concur with the permits issued by the DES. The New Castle Conservation Commission has provided a letter recommending the approval of the proposal, as long as the plans are followed through as submitted and provided a performance bond is posted, which will be covered by the New Castle Planning Board.

Mr. Chagnon stated that the Shields have engaged in a buffer planting schedule and intend to plant the buffer adjacent to the resource in a manner that will mitigate any impact to the resource. The conditions will be better than what currently exists. A drip apron will infiltrate runoff from the backside of the structure, and a porous asphalt driveway will help treat water so it does not run off into the resource. There will be an overall reduction in impervious lot coverage from 23.9% to 19.2%, as well as a decrease in impermeable surfaces. The improved buffer plantings will also help with drainage on the property.

Ms. Goldberg asked about the increase in overall volume of the structure. Mr. Chagnon estimated that there will be approximately 200 cubic feet volume in increase, but noted there will be no volume increase in the 50 foot setback.

Attorney Baum pointed out that the overall setbacks will be improved. The front yard setback will go from 15.3 feet to 16.7 feet, where 20 feet is required. He emphasized the difficulty of the lot given its small size and that it is almost entirely within the tidal buffer zone. Therefore, there is really nothing that can be done on the lot without some relief. The Applicants have done their best to minimize the impact and to work with the property, he concluded. They will still need to obtain a conditional use permit from the Town Planning Board.

Attorney Baum 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 consistent with the criteria of the ordinance and the Master Plan. It keeps New Castle primarily residential and protects unique island character of New Castle. The proposal allows a flood code compliant new home, an overall reduction in impervious surface and overall improvement with additional plantings. The building will be tasteful and in keeping with the surrounding neighborhood, which consists of two story, single-family homes. The proposal also protects the ecology of the shoreline, as demonstrated by the letters submitted by the New Castle Conservation Commission and the DES permit approvals. Furthermore, the variances will not alter the essential character of the locality, nor will they threaten the public health, safety and welfare of the community.

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

Attorney Baum argued there will be an overall improvement in line with the neighborhood. The proposal will clearly increase the value of the Applicants' property, and should only increase the value of surrounding properties.

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

Special conditions exist in that the subject property is a small lot almost entirely within the tidal buffer. The site is subject to a drainage easement and storm drain/sewer easement, which further impacts the use of the lot. Attorney Baum stated that the purpose of setbacks is to preserve the air, light and space between neighbors, which he felt will not be impacted in this case. The structure will be further back from the road, meets all height requirements and is in keeping with the neighborhood. There will be no impact to views. Having the replacement structure meet code is not feasible or necessary, according to Attorney Baum. The Applicants are attempting to reduce the impact to the tidal area, and the proposal creates a more livable house with an overall reduction in impervious surface. The proposed use is reasonable.

5. *Substantial justice is done:*

Attorney Baum argued that there is no loss to the public should the variances be granted. There will be an overall improvement to protections to the resource that have been vetted by the New Castle Conservation Commission and the NHDES. A denial would be a great loss to the Applicant, as they will lose the ability to improve their home, have a more livable home and garage, and bring their house up to code.

Members of the public were then given the opportunity to speak. Brad Jones of Stratham stated that he has property on Mainmast Circle and felt that the proposal is reasonable.

No letters were received from the general public. Hearing no further comments, Chair Baker closed the public session and opened the discussion amongst Board members.

Ms. Goldberg felt that the proposal is reasonable and the Applicants have done their diligence on minimizing their impact on the wetlands and environment. Mr. Lannon agreed and commented that the proposal was well-researched, well-developed and well-presented. He acknowledged the hardships to the lot and felt that where improvements were possible, they are being made. Mr. Lannon recognized that small tradeoffs are required in this sort of situation, and that the Applicants have been thoughtful and minimized impacts when possible. He stated that he had no concerns or complaints with the proposal.

Ms. Sofio noted that while she was initially skeptical, she was impressed with the reduction in impervious surface area, and also appreciated the suggestions of the Conservation Commission. She referred to the brief that was filed by Attorney Phoenix, which she felt was helpful and covered the legal issues quite well. Mr. Gardner commented that the presentation was very thorough, and he cited the DES, Army Corps of Engineers and Conservation Commission approvals as being beneficial to the overall application. He is in favor of the proposal.

Chair Baker agreed and felt that the Applicants have met the five criteria. He stated that it is a reasonable and well-considered project. In his opinion, the main issues are primarily

Conservation Commission and DES related, and those have been addressed. The impact on the front setback is fairly minor, and the overall proposal seems reasonable. Ms. Goldberg added that she appreciated how alternative locations were examined and that it was in the public interest to place the house where it is depicted in the proposed plans.

Mr. Gardner motioned to approve the Applicants' submission to the Zoning Board, and incorporate and support thereof the reasoning set forth in the memorandum submitted by Hoefle, Phoenix, Gormley & Roberts. Mr. Lannon seconded. The motion passed unanimously.

2. Approve Minutes.

Mr. Lannon moved to accept the March 2019 minutes as submitted. Mr. Gardner seconded. 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, June 25, 2019 at 7:00 p.m.

4. Adjournment.

There being no further business, Chair Baker moved to adjourn the public meeting. Mr. Gardner seconded. The motion carried, unanimously, and the meeting adjourned at 8:25 p.m.

Respectfully Submitted,

Meghan Rumph
Secretary