

MINUTES OF THE NEW CASTLE ZONING BOARD OF ADJUSTMENT
Tuesday, June 25th, 2019 – 7:00 p.m. (Town Hall)

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

Members Absent: Mark Gardner, Alyson Tanguay.

Others Present: J.D. Barker, 28 Colonial Lane, New Castle, NH; Elizabeth Barnhorst, 14 Pit Lane, New Castle, NH; Christine Collins, Portsmouth, NH; Dennis and Shari Donnermeyer, 31 Spring Hill Rd., New Castle, NH; Derek Durbin, Durbin Law Offices, PLLC, 144 Washington St., Portsmouth, NH; Jane Finn, 69 Portsmouth Ave., New Castle, NH; Jay and Mary Pat Gibson, 91 Cranfield St., New Castle, NH; Susan Gough, 35 Little Harbor Rd., New Castle, NH; Maggie Kennedy, 99 Campbell Lane, New Castle, NH; Bernie Pelech, Attorney, 266 Middle St., Portsmouth, NH; Steven and Patricia Wilson, 27 Colonial Lane, New Castle, NH.

Chair Baker called the meeting to order at 7:05 p.m. and asked attendees to sign in.

Case #2019-02. Continuance for Applicants Steve and Patricia Wilson of 27 Colonial Lane, who 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.

Stephen and Patricia Wilson previously submitted an application for variances in 2018, and Chair Baker noted that it is the policy of the ZBA to not consider an application if it does not have any material differences from the previous submission. If it is decided that the application is not materially different, the ZBA will not hear the case. Attorney Derek Durbin, representing the Wilsons, requested a continuance of the hearing after catching a significant mistake in the surveying plans. The current application is materially incorrect as of the time of the ZBA meeting. He noted that once the plans have been corrected, it may even result in a withdrawal of the application. Mr. Lannon motioned to continue the case. Ms. Sofio seconded. The motion carried unanimously.

Case #2019-04. Applicants Sharon and Dennis Donnermeyer have requested a variance from Article IV Section 4.2.1.5 in order to install a basement door which will increase the building area above the maximum area allowed.

Prior to hearing the case, Mr. Fitzpatrick noted that he lives at 48 Spring Hill Road and is a neighbor of the Donnermeyers. He previously had a similar issue to theirs, but did not feel that it would impact his ability to hear the case. Ms. Goldberg also commented that she is part of the neighborhood and her husband is friendly with Mr. Donnermeyer.

Attorney Bernie Pelech presented the Donnermeyer's application. The Donnermeyers recently purchased 31 Spring Hill Road a few months ago. The house was built in 2011 and is 1.75 stories. The existing home meets all of the setback requirements for front yard, side yard and rear yard, and meets the lot coverage requirements as well. The Applicants are seeking to install a five foot sliding glass door on the lower level to give access to the backyard. Mrs. Donnermeyer

would like for her mother, who is wheelchair-bound, to be able to use the family room downstairs.

Although the footprint will not be changing, the installation of the sliding door would result in an increase in building area because the basement would then be considered a walk out. Because of this, half of the square footage of the basement would have to be included in the calculation of the building area, which would render the buildable area of the lot to be in excess of what is permitted.

Attorney Pelech 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:*

Attorney Pelech argued that the addition of a sliding door in the basement of the home would not alter the characteristics of the neighborhood, nor would it affect the public health, safety and welfare. Nobody will see the sliding glass door because it will be in the rear of the house. Adding an egress from the basement without having to climb up stairs will be an improvement to the public health, safety and welfare, especially for those who are handicapped or elderly.

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

The installation of the sliding door will not diminish the surrounding property values, as attested to by the fact that there were no objections from neighbors.

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

Attorney Pelech argued that the lot at 31 Spring Hill Road has special conditions and thus creates a unique hardship to the Applicants. The land slopes dramatically from front to back, which is unlike other surrounding properties. The foundation in the front is totally below ground, whereas the foundation in the back is completely exposed. The Donnermeyers will not be increasing the building area or living space of the house, and it will remain as it was originally built. There is no fair and substantial relationship between the intent of the ordinance as it relates to the Applicants' property. Attorney Pelech argued that the ordinance is intended for new houses being constructed and the amount of livable space within the house. In this case, the Donnermeyers are not putting in a sliding door to make the basement bigger. Furthermore, over half of the basement is not living area but rather consists of utility rooms.

The proposed use is reasonable, and there exists no fair and substantial relationship between the purposes of the zoning ordinance regarding maximum building area as it is applied to the Donnermeyers' property. The zoning ordinance is intended to address construction of new structures, which is not the case with this Application.

5. *Substantial justice is done:*

Denying the requested variance means that Mrs. Donnermeyer's mother will not be able to access the living area on the bottom floor. It is not safe to have to go up one or two sets of stairs in order to exit the basement living space. There is no benefit to the public in denying the variance. Attorney Pelech argued that it is clear that the hardship upon the property owners is not outweighed by the benefit to the public in denying the variance.

Ms. Goldberg asked about access to the basement level from the side yard. Mrs. Donnermeyer responded that she could push her mother in the wheelchair down the grass from the side yard.

Chair Baker read a letter from Sheila and Edso Harding of 42 North Gate Rd. The Hardings are neighbors behind the Donnermeyers and do not have any objection to the proposal. In addition, Anne and Bob Miller, direct abutters to the Donnermeyers, wrote in support of their request and predict no negative impact on their property values or enjoyment of their property.

Mr. Lannon felt the request was straightforward and agreed with Attorney Pelech in that the issue at hand seemed to be more of a technicality in the zoning ordinance. He noted that there are no objections from neighbors and the plan seemed well thought out, so he found no issue with the application. Ms. Sofio appreciated the support from neighbors and felt the request was de minimis. Mr. Fitzpatrick and Ms. Goldberg agreed and were in favor as well. Chair Baker agreed that the intent of the zoning ordinance is to avoid bulking up lots, and felt this was not the case with the Donnermeyer's application. Mr. Fitzpatrick motioned to approve the application as submitted. Mr. Lannon seconded. The motion carried unanimously.

2. Approve Minutes.

Mr. Lannon moved to accept the May 2019 minutes as submitted. Ms. Goldberg 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, July 30, 2019 at 7:00 p.m.

4. Adjournment.

There being no further business, Chair Baker moved to adjourn the public meeting. Mr. Lannon seconded. The motion carried, unanimously, and the meeting adjourned at 7:37 p.m.

Respectfully Submitted,

Meghan Rumph
Secretary