

MINUTES OF THE NEW CASTLE ZONING BOARD OF ADJUSTMENT
Tuesday, August 20th, 2019 – 7:30 p.m. (Town Hall)

Members Present: Todd Baker, Chair, Mark Gardner, Ben Lannon, Alyson Tanguay.

Members Absent: John Fitzpatrick, Rebecca Goldberg, Margaret Sofio.

Others Present: J.D. Barker, 28 Colonial Lane, New Castle, NH; Elizabeth Barnhorst, 14 Pit Lane, New Castle, NH; Ellen and Randy Bryan, 34 Wentworth Rd., New Castle, NH; Christine Collins, Portsmouth, 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; Scott Hogan, The Law Office of Scott E. Hogan, Lee, NH; Maggie Kennedy, 99 Campbell Lane, New Castle, NH; R. Timothy Phoenix, Hoefle, Phoenix, Gormley & Roberts, P.A., 127 Parrott Ave., Portsmouth, NH; Steven and Patricia Wilson, 27 Colonial Lane, New Castle, NH.

Chair Baker called the meeting to order at 7:32 p.m. and asked attendees to sign in.

Chair Baker first presented new business, which was a request from the Historic District Commission to get a bigger sign, which would be located on Town land. The Select Board is fine with the proposal and wanted ZBA approval. The fixed sign would cost approximately \$4000 and would be 19 feet up the steps where the HDC is located. Mr. Lannon motioned to support the sign of the HDC. Mr. Gardner seconded. Motion carried unanimously.

Case #2019-05. Applicants Ellen and Randolph Bryan of 34 Wentworth Road (Tax Map 18, Lot 64) have requested a variance from Article VII Section 7.2.1 in order to build a garage addition within the setback.

Applicant Randy Bryan presented the proposal for his property, which is a conforming lot size. The house was built in 1855 with an addition constructed in 1926, thus predating zoning ordinances. Both sheds on the property are located in the west setback and also predate setback ordinances. Mr. Bryan and his wife are requesting to build a second bay to their garage with an attached shed on the west side of the house. The structure would be nonconforming and extend four to seven feet into the west setback. It would replace a garden shed, which is a nonconforming structure of similar size and volume that sits one foot from the property line. The garden shed would be relocated to another property out of town. A building permit for a two-story, one bay garage with living space on the second floor has already been issued by the Town, but construction has not begun. The current and proposed structures do not exceed the 20% maximum lot coverage.

The proposed garage addition is a one-story, hipped roof, 12 foot by 20 foot second bay onto the approved garage. The proposed garage bay will have the same appearance as the approved first garage bay door. The garage of the first bay measures 12 feet by 24 feet. The shed would be the same style as the approved shed extension on the north face of the approved garage. The proposed shed would be further away from the property lines of the abutting Masons and Sweets.

The Bryans would also be replacing a section of post and rail fence on their property along Wentworth Road with a stone retaining wall, which would be taller than 18 inches in some spots. A section between the rock outcrop and the stone fence would be raised and leveled off with dirt and planted grass for easier lawn maintenance. Mr. Bryan noted that the Town Building Inspector only referred the garage addition of the proposal to the ZBA, and not the proposed rock retaining wall, which the Building Inspector stated was out of the purview of the ZBA.

Mr. Bryan 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:*

Mr. Bryan argued that granting the variance will better protect their property and safety and acknowledges modern day parking requirements for year-round residential living. The resulting net increase of setback distances and removal of the shed should improve the light, air and space in the area. The proposed garage is more conforming to the architecture of the property and would not alter the essential character of the neighborhood. The proposed garage bay will not affect any important viewpoints for the neighbors. A large outcrop and vegetation will block the visibility of the garage from the nearest abutters.

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

The proposed garage addition is 150 feet away from the road and is behind the knoll on the property, so it will be minimally visible from the road and neighbors. There will be a decrease of approximately 80 square feet in the setback footprint with the shed removal and garage addition.

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

Property safety is a key issue, and not granting the variances would expose the property and the Bryans as homeowners to significant security and safety risks. Denial of the requested variance would increase the risk of property damage, as the Bryans would have to park their second car outside and exposed to the elements. The Applicants argued that there is no other location on the property that satisfies their second car parking requirements of being protected, covered, with safe access and adjacent to the other car. The garage cannot be built on the east side of the house due to Historic District Commission restrictions. Locating the garage on the south face would substantially degrade the property's value and the homeowners' happiness of use, as this knoll is the primary outdoor entertainment area. There is also a view easement on the southeast section of the property that prohibits structures over 72 inches tall. The north face of the house has insufficient clearance for vehicles to pass through. Locating the garage elsewhere on the property subjects the Bryans to uncomfortable and inconvenient transit to and from the house, in addition to safety issues for older residents in inclement weather.

5. *Substantial justice is done:*

The proposed location for the garage addition is minimally visible or proximal to any neighbor or Town streets. The garage will be five feet farther away from the nearest house, the Masons, than the current shed, which will be removed. It will also be further from the nearest property line, which is the Sweets. The property's lot coverage would remain conforming and the footprint within the setback would decrease by about 80 square feet.

Mr. Bryan distributed an opinion of value from Terri Golter, who is a Town resident and longtime real estate agent. She stated that there would be no decrease in value to surrounding homes should the Bryans add the second bay to the garage, and that a two-car garage would be in

keeping with new homes in the immediate neighborhood. A statement of values was also submitted by Mark and Elise LaCasse of 39 Wentworth Road, who have a view of the Bryans' property. The LaCasses' fully support the proposal and understand that adding a second garage bay will help make year-round residence possible for the Bryans. They appreciated the communication with neighbors about their plans.

Mr. Bryan acknowledged that the HDC requested the Bryans have only a one-car garage, and attributed this to objections of neighbors and construction going on inside the house.

Chair Baker read letters received from the north and east side abutters in opposition to the proposal. Jennifer Kopser and Elizabeth Feder of 24 Wentworth Road expressed concern about the effects of the proposed fill and retaining walls. They want the Bryans to have a certified engineering report done at the Bryans' expense to address any potential watershed impacts that may result from changing the grading of the property. Ms. Kopser and Ms. Feder argue that their property sits much lower than the Bryans', so they are worried about runoff going into their lot and the potential for drainage issues, which would cause flooding into their side yard. They also mentioned concern about the removal of mature growth along the property line. They felt there were too many inconsistencies in the proposal and do not want any further work being done to the Bryans' property until a certified engineering report has been performed.

Kristy Garretson and Harvey Mason own abutting property to the Bryans and are also opposed to their application. While they acknowledge that the variance requested is for the setback with the Sweets' property, they argue that the proposed structure is larger in footprint and taller in height than the shed that is currently on the property. Ms. Garretson and Mr. Mason claim that the overall end-to-end length of the Bryans' home would be approximately double the length of the existing house, which will create a feeling of overcrowding and will reduce the open space and daylight that currently comes through. They note that their real estate agent has reviewed the plans and stated that the proposal would detract from their property value. Ms. Garretson and Mr. Mason felt that an alternative must exist in extending the already approved attached two story, one-bay garage without violating any setbacks. They also expressed concern with the storm water management, as their basement already has water issues. They urge an engineering study of water management be completed to ensure the long-term protection of their property, given the proposed topography changes, retaining walls, fill and additional impervious ground space.

Attorney Timothy Phoenix spoke on behalf of Ms. Garretson. He pointed out that a garage of same dimensions and height will be taller than the existing shed because the ground level will be higher. The garage will negatively affect Ms. Garretson's property values and air, space and light. Her house is right on the lot line, so adding any impervious surface area will affect water drainage. Attorney Phoenix expressed concern about the fill going all the way to Ms. Garretson's house, and how this may impact the requested variance. He stated that the Bryans' plans should be complete and in order to fully understand the effect of the proposed retaining wall and fill on stormwater treatment. Further, he felt that if the proposed retaining wall is over 18 inches in height, the Bryans must apply for relief for this aspect as well.

Skip Homitz, a neighbor on Main Street who shares the southeast corner with the Bryans, felt that the request for a two-car garage is reasonable from a quality of life standpoint. He

commented that the Bryans are giving more than they are taking, and felt that they would be more in compliance. Mr. Homitz strongly supports the proposal.

Derek Durbin, speaking as a member of the public, was in support of the application as well. He had represented the Bryans at the Historic District Commission. Mr. Durbin stated that the request is simple. Although the structure may encroach into the neighboring property, it would improve conditions with the in-fill development that would connect the garage with the existing home structure, which would be tastefully designed and fitting with the character of the neighborhood. There would be no shadowing on neighboring lots and no privacy concerns, as setbacks would be improved upon, which in turn will improve light, air and space.

Ellen Bryan spoke about the porosity issues being raised by some abutters. She prefaced her comments by stating that she holds a Master's in Science degree in environmental studies, so she has been especially sensitive to minimizing environmental impacts. She argued that adding soil will benefit water retention and drainage. The retaining wall would be less than 18 inches for the most part, and the grading would be going toward the Bryans' driveway and the roses. She felt that grading within inches of the property line is not a hardship to the abutters who are objecting the proposal. Ms. Bryan also addressed concerns about vegetation, noting that she and her husband have been maintaining the lilacs in front of their house. A tree that was cut down was a nuisance tree that was in the middle of utility lines going to the house, and had been battered in recent windstorms. She understood concerns about privacy, but felt that these were being sufficiently addressed through their proposal.

Ms. Bryan noted that she and her husband have previously requested that the Garretsons remove water drainage, but they have not done so. She stated that the Garretsons' front gutter has growth going in it, and added that their sump pump was draining into the Bryans' property and along the property line. Therefore, she felt that many of the issues that Ms. Garretson brought up in her letter can be resolved on her own property. Further, the Bryans had an environmental architect come to their property last fall to assess light, and the architect found that any shadowing is being caused by the existing structure and the trees on the Sweet property. The proposal would have no impact on the light on the Garretson property. Lastly, Ms. Bryan commented that the Town Building Inspector informed them that it is not necessary to have an engineer attest to water drainage on the property and noted that lot coverage is not an issue.

Mr. Bryan stated that the fill would go up against the foundation wall so that it would not be necessary to dig very deep, and in order to protect the foundation against frost incursion and issues. The Bryans want to preserve and reinforce their driveway and garage structure, while making the backyard more easily accessible. The Applicants wish to make aging in place doable and to be able to access their second car through safe, protected means. The added fill will help with the use and happiness of the Bryans' property, and will be an additional buffer on water runoff.

Ms. Tanguay expressed that it would be helpful to see contour lines in the plans. She felt that the retaining walls should be considered when discussing the requested variance because the retaining walls become necessary with the proposed one-story garage addition. Mr. Bryan replied that no elevation study has been done on the property.

Mr. Bryan then presented his rebuttal to the objections of the Masons and Feders. He expressed frustration that the Masons and Feders have objected to proposals every step of the way in the process and have not been willing to communicate as neighbors in order to come to a mutual agreement. Mr. Bryan noted that both objecting abutters have not been year-round residents in Town for quite some time, whereas the Bryans are seeking to improve their home to allow for year-round primary residency. He disputed Ms. Garretson's claim about the proposed structure being significantly larger, and noted that the garage footprint in the setback will actually be 120 square feet less because of the relocation of the shed that is currently in the setback. The height of the shed that will be removed and relocated offsite is approximately 14 feet, and the proposed garage height will be 13 feet, so the overall roofline will be lower. Mr. Bryan added that the proposed garage extension will be farther from the Mason house than the existing shed.

He argued that Mr. Mason and Ms. Garretson have more shadows from their own trees than they will from the Bryans' proposed structure. The plan will create more open space closer to the Mason house. He also commented that landscaping is not under the purview of the ZBA, and noted that the proposed fill would be in inches, not feet, so it will be insignificant overall. Lastly, Mr. Bryan refuted claims about storm water management, citing the Masons' failure to adequately address the drainage problem on their own lot. He claimed that the Masons have been dumping their roof and basement sump water onto the Bryans' property without consulting them or the Town, and have failed to correct the drainage issues despite repeated requests by the Bryans.

In addressing the letter from Ms. Feder and Ms. Kopser, Mr. Bryan argued that the porous section of his approved driveway drains away from the Feder house and toward the street. Additional fill and landscaping will help improve runoff water drainage. He added that he and his wife have sought to preserve the lilacs along the boundary line with Ms. Feder. Landscaping plans have already been reviewed and approved by the Town.

Overall, the Bryans felt that the two neighbors' objections are exaggerated and do not have substantial weight. According to the Applicants, the Masons and Feders have been reluctant to listen to plans and communicate with them, and they have an exaggerated view of how the Bryans should control their property.

Chair Baker opened discussion to the Board. Mr. Lannon felt that the proposed addition to the garage is not an exact change for removing the existing shed, but conceptually felt that the shed and addition were similar to the space being taken up. If the shed wasn't there, he would have a hard time approving the garage addition. Mr. Lannon stated that in total, the project will probably feel like a big addition to the back section for the Mason house, but would likely feel the same with the second garage bay. He acknowledged that the Bryans already have approval for most of the project anyways, and the proposal would lessen the setback violation. Ms. Tanguay understood how some pressure would be alleviated along the property line, but was struggling with the hardship piece to the property, and not just the hardship to the property owners. She would like to see the full plans showing the retaining wall details. Mr. Gardner noted how the structure along the property line would be removed and replaced with something that makes the lot more conforming. He felt that the Masons are objecting to a larger portion of the garage that has already been approved. Mr. Gardner stated that he was leaning toward

approving the variance as submitted, but would put a condition on the approval that the other shed would be removed from the property as stated by the Applicants.

Chair Baker commented that the request seemed very reasonable, and felt that the garage location is reasonable and makes sense. He agreed with Ms. Tanguay that there exists another spot to put the garage, which would be on the knoll, although that is not ideal for the Applicants. He wished neighbors could be more respectful and tolerant of each other. Overall, Chair Baker would be in favor of supporting the application, as it would make the home less nonconforming, and the request is reasonable and meets the hardship requirement.

Mr. Lannon motioned to approve the request to build the garage addition adjacent to the previously approved garage plan, having satisfied the five criteria as laid out by the Applicants. Mr. Gardner seconded. Motion carried unanimously.

Case #2019-02. Continuance for Applicants Steven and Patricia Wilson of 27 Colonial Lane (Tax Map 17, Lot 15) 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.

Steven and Patricia Wilson previously submitted an application for variances in September 2018, which was denied by the ZBA. They subsequently came before the ZBA again in June 2019. Upon finding an error in the new application, Attorney Derek Durbin, representing the Applicants, requested a continuance in order to correct the mistake in the revised site plans.

Attorney Durbin went through the material changes in the latest application in order to justify the rehearing of the Wilsons' case. The ZBA will 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 Durbin noted that the allowable building area on the current site plan has been revised to correct the error on the prior site plan, which had depicted the Wilsons' property as being nearly double the allowable buildable area. The Wilsons' property will be 3,392 square feet, where 3,665 square feet of buildable area is permitted by Town Ordinance. The prior site plan also indicated that the Wilsons would be increasing lot coverage by approximately 0.5% as a result of a proposed set of stairs to the rear side of the existing garage. The stairs have since been eliminated from the proposal. Therefore, the lot coverage will remain the same and the Wilsons will not require a variance for lot coverage on their property.

Other material changes in the latest proposal include the elimination of an eight foot by six foot cantilevered balcony that would have projected into the existing non-conforming left side yard setback by an additional two feet. The removal of the balcony results in a three percent reduction, or 16 square feet, in the overall size of the proposed addition. With the elimination of the balcony, there will be no further encroachment into the left yard setback beyond that which already exists, and the vertical expansion proposed will now be entirely over the existing non-conforming structure. Attorney Durbin argued that this will address concerns of their nearest abutters, Jay and Mary Pat Gibson, over privacy, light, air and space. Privacy concerns are also being addressed in the latest proposal through the reduction in the number and size of windows.

The total square footage of proposed windows has been reduced by 44%, from 72 square feet to 44 square feet, and window placement has been modified to further address privacy concerns.

Attorney Durbin noted that the latest design is conceptually similar to what was proposed and denied by the ZBA last year. However, he argued that part of the previous denial was due to the Applicants' lack of detail in addressing how they met the five criteria for zoning relief. In denying the application, the Board expressed desire to see the Wilsons work with the abutting Gibsons to come to a mutually agreed upon plan for the proposed vertical expansion. Attorney Durbin stated that the Wilsons have tried to work through disagreements with the Gibsons, but this has not led to anything substantial.

He also commented on the alternative location of the garage offered by Attorney Bernie Pelech, who previously represented the Gibsons. This alternative, Attorney Durbin argued, would be cost prohibitive and would require re-doing the utilities going into the house, in addition to causing significantly greater impacts to the surrounding wetlands. The proposed addition over the existing garage and connected breezeway is the most logical and architecturally compatible design for the Wilsons' home. While the Applicants could hypothetically expand vertically over the existing breezeway and garage in the areas that are outside of the 15 foot side setback and thus not require a variance, the resulting look would not make sense architecturally in comparison to the rest of the structure and other neighboring homes. Such a design would also not resolve the concerns raised by the Gibsons.

Attorney Scott Hogan, who currently represents Jay and Mary Pat Gibson, submitted a letter to the ZBA prior to the June meeting in which the Wilsons' case was to be presented again. Attorney Hogan argued that the ZBA has no jurisdiction to hear the Wilsons' application again, as there are no material changes in the proposed use of the land or in the circumstances affecting the merits of the application. He stated that the application is essentially the same as the one that was previously denied, and it does not address the fundamental reasons for the denial, which include the increase in the existing nonconformity and the effects on light, air and privacy. In his letter, Attorney Hogan concluded that the ZBA does not have legal jurisdiction to hear the Wilsons' latest application, as it is a derivative attempt to get the Board to overturn its prior decision, which became legally final after the Wilsons did not request a rehearing within 20 days of the original denial.

Attorney Durbin refuted Attorney Hogan's argument about the ZBA having no jurisdiction over rehearing the Wilsons' application. Attorney Durbin argued that it is questionable under New Hampshire case law whether the Board can hear the application or decide its merits because the application *only* involves a vertical expansion over an existing structure with no further setback encroachment or non-conformance under the Town Ordinance provisions. Attorney Hogan responded that even if a building permit were issued for the hypothetical vertical expansion outside of the setback, there would still be the potential for an administrative appeal back to the ZBA.

Attorney Hogan summarized the Gibsons' position that the application is substantially the same, does not mitigate impacts, and does not meet the variance requirements. The neighborhood is already very dense, and the houses are close together. Attorney Hogan argued that the proposal would impact the daily use and enjoyment of the Gibsons' property and would decrease their

property values. He also pointed to the possibility of the Applicants building an expansion that would not require any variances.

Chair Baker opened discussion about rehearing the application to the Board. Mr. Lannon stated that the proposal was denied last time because of the lot coverage issue, encroachment into wetland setback with the proposed staircase, and the overall lack of clarity on what everything would look like. He felt that the abutter opposition can remain same, but the overall conversation about the variances requested will change because the issues with lot coverage and wetland setback have changed. Ms. Tanguay shared that she was struggling with how significant the latest changes are, as well as balancing the hardship being tied to the property with the specific condition of the property owners. Overall, she would air to hear it again. Mr. Gardner deferred to his colleagues over whether to rehear the case. Chair Baker stated that the other two variances still being requested with the most recent application were important, and he would like to hear the case again.

Mr. Lannon motioned to accept the application of Steven and Patricia Wilson, case #2019-02. Ms. Tanguay seconded. Motion carried unanimously.

Attorney Durbin, representing the Applicants, summarized the property as a 1.5 story, single family home with an attached breezeway and garage. The home was built in the 1950s before current zoning regulations. There are surrounding wetlands that constrain the property. The current proposal would be to add approximately seven feet above existing height of the breezeway and garage rooflines. The addition would be 650 square feet. The purpose is so that the existing single family home can be reconfigured to allow the Wilsons to remain at the property as they age by creating a first floor master bedroom. The Wilsons are requesting variance relief relative to the vertical expansion of the existing breezeway and attached garage. The proposal would involve vertical expansion of a nonconforming structure in the setback, but would no longer include additional horizontal impacts which were in the previous application.

Attorney Durbin 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 current building remains in the same footprint and preserves light, air and space, as there are approximately 30 feet between the Applicants and the neighboring Gibsons. The Wilsons' property is down slope from the Gibsons' home where the seven foot vertical expansion increase in roofline is being proposed. This is a mitigating circumstance and the viewshed is protected. The proposal is small in scale and is architecturally compatible. The Applicants' house would actually remain smaller than surrounding homes. The vertical expansion of the breezeway and garage is the least invasive option.

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

The vertical expansion of a structure that is architecturally compatible and similar in size and scale to other structures in the neighborhood would not degrade surrounding property values.

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

The property has distinguishing features from other surrounding properties, and a significant portion of the Wilsons' lot falls within regulated wetland boundaries. The home has existed in

the current location and configuration for decades. If the home were to be relocated or resituated, there would be many new issues. This proposal requires the least amount of relief, other than expanding vertically in areas outside of the setback, which would not require a variance but would do injustice to the Wilsons' home and surrounding properties.

5. *Substantial justice is done:*

In determining the right of the private homeowner versus the public, Attorney Durbin concluded that there is no public interest that could outweigh the detriment to the Applicants. He argued that aging in place is good public policy, and there is no detriment to the public overall. An equitable balancing test weighs in favor of the Applicants.

Discussion was opened to members of the public. J.D. Barker recently bought the house located at 28 Colonial Lane. He is a real estate investor with years of experience, and felt that the new proposed elevation would be an improvement over the current structure's elevation relative to surrounding homes. Mr. Barker believed that the property will overall look better. He noted that the back of the Wilsons' house faces the Gibsons' home, so the proposal would not impact views from the Gibsons' house. Town resident Beth Barnhorst also spoke in favor of the application. She felt that the Applicants were doing the best they can to accommodate neighbors, and appreciated the efforts to reduce impacts to the wetlands.

Attorney Hogan noted that although viewshed is not a protected right, it directly impacts the future marketability of abutting properties such as the Gibsons. He stated that when the Gibsons renovated their home several years ago, they chose to do so without requesting variances, even though this was more expensive for them. Concerning the variance requirements, the Applicants' proposal would have an effect on surrounding property values. There is no benefit to the public, nor is there public interest in this case. Attorney Hogan claimed that the primary reason for the proposed expansion is acknowledged to be a personal lifestyle choice of the Wilsons. The fact that the lot coverage is no longer an issue is only because the last application had an error in calculations. Attorney Hogan argued that this should not be considered as a material change in the application given that it was an error on the surveyor's part. He added that there is no hardship specific to the property, and cited case law about self-created hardship. Attorney Hogan stated that the application is contrary to spirit of ordinance, and even the Applicants have acknowledged that there is a negative impact to the Gibsons.

Mary Pat Gibson spoke in opposition to the application. She and her husband are rear abutters to the Wilsons. While she understands why the Wilsons would like to have access to a first floor bedroom, she felt that there exists other options that would be less expensive and have no visual impact to neighbors, such as installing an interior elevator. Ms. Gibson noted that the Wilsons' home was built along the property line and encroaches into current setbacks in at least four places. She argued that the proposal would allow more structure to be built close to the Gibsons' property, claiming that the Wilsons have designed the expansion with a low roofline which benefits other abutters that are at least 85 feet away. The Gibsons' backyard is very important to their enjoyment of the outdoors and privacy. She asked the Board to follow the Ordinances as they are written.

Attorney Durbin noted that there is a public interest involved in the case because there would be no further wetland disturbance. As for the self-created hardship, he argued that there is no way to not impact the wetland with an alternate building design. The testimony of J.D. Barker, who

Attorney Durbin argued could be considered an expert given his occupation, attests to the Applicants' position that there would be no diminution to surrounding property values. Attorney Durbin added that he was not aware of Mr. Barker's plans to speak at the meeting.

Chair Baker opened discussion to the Board. Mr. Gardner stated that he felt torn but was impressed by Mr. Barker's input. While he understood the abutters' concerns about their backyard being impacted, he did not understand how the proposal would lower their property values. Ms. Tanguay overlaid the proposal from last September to the latest one and appreciated the elimination of the balcony in particular. She felt that the increase in nonconformity is relatively minor, and that the overall proposal is minor and measured.

Mr. Lannon stated that if there was no opposition from abutters, this case would be an easy approval, especially given that the primary issue is no longer about the buildable area like it was with the previous proposal. He believed that the Wilsons' desire to change their property so they can continue to stay there is reasonable. Mr. Lannon did not see another way for this to happen without significantly changing the plan.

In his analysis of whether to approve the variances requested, Chair Baker went through the criteria for zoning relief. He felt that the variances were not contrary to public interest, nor would there be any threat to the health, safety and welfare of the community. He acknowledged that the spirit of the ordinance in terms of setbacks is a legitimate concern because of the Gibsons' opposition. The purpose of setbacks is to allow for separation between buildings. The Wilsons' home already exists on the property, and the proposal would be marginally worse with a slightly taller building. Therefore, Chair Baker concluded that the spirit of the ordinance is observed. In determining whether substantial justice is done, he analyzed whether the impact to the Applicant in denying the variances would be outweighed by any benefit to the public. While he felt that the benefit to the public was not supported, he understood the benefit to the Applicants. Chair Baker stated that the value of surrounding properties is not diminished, and found no evidence showing otherwise. Lastly, literal enforcement of the provisions of the ordinance would result in unnecessary hardship. The proposed use is reasonable, as having an additional bedroom is not unreasonable for a residential property. Mr. Lannon added that there is property hardship given the 50 foot wetland setback surrounding the property. Further, the existing foundation is adequate for upward expansion, so there would be no significant disruption to the wetlands.

After walking through the five criteria, Mr. Gardner felt that the balance tipped in favor of approving the variance, notwithstanding the reservations he had. Mr. Gardner motioned to approve the variances requested by Applicants Steven and Patricia Wilson and incorporate the reasoning of their attorney, Derek Durbin. Mr. Lannon seconded. Motion carried unanimously.

2. Approve Minutes.

Mr. Lannon moved to accept the June 2019 minutes as submitted. Ms. Tanguay 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, September 17, 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 10:21 p.m.

Respectfully Submitted,

Meghan Rumph
Secretary