

**MINUTES OF THE NEW CASTLE ZONING BOARD OF ADJUSTMENT  
Tuesday, December 17<sup>th</sup>, 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:** George Almgren, 17 Cranfield St., New Castle, NH; Marcia Beckett, 4 Quarterdeck Lane, New Castle, NH; David Borden, 40 Walbach St., New Castle, NH; Vivian Campbell, 129 Wild Rose Lane, New Castle, NH; Corey Colwell, TFMoran, 170 Commerce Way, Portsmouth, NH; Mary Ann Driscoll, 4 Cranfield St., New Castle, NH; Sally Fodero, 69 Piscataqua St., New Castle, NH; Stephen Johnson, 23 Oliver Street, New Castle, NH; Steve Joselow, 12 Cranfield Street, New Castle, NH; Michelle LaCount, Kalil & LaCount, 681 Wallis Rd., Rye, NH; Peggy Lamb, 12 Cranfield Street, New Castle, NH; Bernie Pelech, 266 Middle Street, Portsmouth, NH; Caitlin Phaneuf, 129 Wild Rose Lane, New Castle, NH; R. Timothy Phoenix, Hoefle, Phoenix, Gormley & Roberts, P.A., 127 Parrott Ave., Portsmouth, NH; Mary Robbins, 115 Piscataqua St., New Castle, NH; Bill Soupcoff, TMS Architects, 1 Cate St., Portsmouth, NH; Mary Tilney, 28 Cranfield St., New Castle, NH.

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

**1. Case 2019-07. Marcia Beckett, owner of 4 Quarterdeck Lane, Map 9, Lot 16, has requested a variance from Article 9, Section 2.5.1 and Article 4, Table 4.2 in order to permit the construction of a deck within the setback.**

Attorney Bernie Pelech presented the application on behalf of Marcia Beckett. The Applicant is seeking to add a one story, 12 foot by 32 foot deck on the rear of the house. The deck would be raised and the ground underneath would not be disturbed. There would be a hot tub on the ground. The home is on a nonconforming lot, and the addition would not comply with the rear setback. Ms. Beckett is requesting a variance for 6.4 feet where 15 feet is required in the rear setback, as well as a variance to allow a structure to be built within 50 feet of the wetland buffer.

Ambit Engineering previously went before the Conservation Commission with Ms. Beckett's proposal. The Commission favorably recommended all items requested, with the exception of a stone patio at grade behind the building, as this would require disturbing a large area within the wetland buffer. Ms. Beckett decided to forgo the patio and instead build a wooden deck, which would involve much less disturbance to the wetland. Attorney Pelech noted that Ms. Beckett would like to take advantage of the views of the marsh behind her property. He added that the Town sewer line runs around the Beckett property.

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:*

The deck will not be visible from the street, and there are no known objections from neighbors. Most homes in the area have a deck. Granting the variances would not substantially alter the

characteristics of the neighborhood or threaten public health, safety, or welfare. Granting the variances would be consistent with the spirit and intent of the ordinance, and not contrary to public interest.

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

The neighboring house to the left is a considerable distance down the road, and the house to the right has been demolished and is being rebuilt. Even with the addition in the rear setback, there would still be adequate light and air, as well as sufficient access for emergency personnel. The addition of the deck would be in keeping with the characteristics of the neighborhood.

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

Forgoing the stone patio and instead opting for a wooden deck satisfies the requirement that there be no detriment to the public interest, since the wetlands will not be significantly impacted with the Applicant's revised proposal. There is no fair and substantial relationship between the purpose and intent of the ordinance as it relates to this application. The nearest abutter to the rear of the property is well over 1,000 feet away. The home has been on a nonconforming lot since its construction in 1995. Any addition to the rear of the house greater than three feet would require a variance. The proposed use is residential and is therefore reasonable.

5. *Substantial justice is done:*

There would be no benefit to the public in denying the requested variances. There would be considerable hardship upon the Applicant, however, as the Applicant would like to have a useable outdoor deck overlooking the large marsh behind the home.

Attorney Pelech confirmed that the Applicant will have to go back to the Conservation Commission if the variances for the deck are granted. The Applicant will also have to go to the Planning Board. Ms. Beckett noted that the NHDES Shoreland Permit application for work within the 100 foot tidal buffer was approved in November, and had been amended to reflect the deck. There are no issues with lot coverage or building size.

Chair Baker read two letters from abutters. Brad Jones of 18 Winnacunnet Road in Stratham was in support of the proposed deck. John Shields of 41 Main Mast Circle stated that he had no issue with variance requested.

Mr. Lannon felt the application was straightforward, and the description of the project is clear. He felt that the five criteria seem to fit in this case. Mr. Lannon saw no opposition from abutters and neighbors, and acknowledged that the DES and Conservation Commission have weighed in on the application already. He would like the application to go back to the Conservation Commission for their final input, if approved by the ZBA. Mr. Fitzpatrick appreciated the collaboration with the Conservation Commission and the decision to put in a deck versus the original patio that was planned. He felt that the five criteria were satisfied. Mr. Gardner would vote in favor and found the application innocuous. Ms. Sofio commented that the lot is unusual, especially with the septic system in the back. She heard no opposition and was inclined to vote in favor. Chair Baker agreed that the five criteria have been met.

Mr. Fitzpatrick moved to approve the application as submitted, having satisfied the five criteria for zoning relief, with the requirement that the application go before the Conservation Commission for final approval. Mr. Lannon seconded. Motion carried unanimously.

**2. Case 2019-08. Peggy Lamb and Steve Joselow, trustees of 12 Cranfield Street, Map 17, Lot 33, have requested a variance from Article 4, dimensional table, and 4.2.1.5 in order to permit the construction of a garage within the setback and a larger building area than allowed.**

Attorney Pelech presented the application for a one story addition to the right side of the existing structure located at 12 Cranfield Street. The addition would consist of a three foot wide entryway and foyer with a 14 foot by 24 foot, 1.5 bay garage on a concrete slab. The house was built around 1925 and is basically a duplication of the next door house. The lot size is 9,148 square feet, where the minimum lot size required is 20,000 square feet. Many of the surrounding structures have nonconforming front and side yard setbacks and/or lot sizes due to the age of the homes. The addition does not comply with the right side yard setback or allowable building area. A variance is needed for the right side setback of 9.69 feet where 15 feet is required, as well as for a building area of 3,402 square feet where 3,272 is the maximum allowed. The building area would increase 130 square feet.

Attorney Pelech acknowledged that opposition to the proposal has been voiced by some abutters. However, he stated that in looking at the elevations for the proposed garage and connector, the proposal will not alter the essential characteristics of the neighborhood. The Historic District Commission has already met with the Applicants. It was determined that the proposed garage addition was a bit too ornate, and the HDC wanted it to be simpler.

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:*

Granting variances will not alter the essential characteristics of the neighborhood or threaten public health, safety, and welfare.

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

Attorney Pelech stated that the abutters in opposition of the proposal feel that the garage will detract from their view or be too close to their homes. However, he countered that there is adequate screening with the existing evergreen vegetation between the existing home and neighboring homes. With the addition, the right setback would be 9.69 feet, which will still allow for adequate light and air, as well as access for emergency personnel. The addition would be in keeping with the characteristics of the neighborhood.

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

The property has special conditions because of the nonconforming lot size and structure. The lot size is less than half of what is required in the Zoning Ordinance. The location of the house within the lot creates unique conditions, as the only place for the garage addition to go is on the right side of the house, and any addition on the right side would require a variance. There will still be adequate distance, nearly 10 feet, between the proposed addition and the neighboring property. The rationale for creating a side yard setback is not violated in this case. Further, the proposed use is allowed and therefore reasonable.

5. *Substantial justice is done:*

There is very little storage space in the existing home. There is no benefit to the general public in denying the variances, but there is considerable hardship to the Applicants in denying the

variances if they cannot have a garage for storage and for vehicles. It is rare to find homes in New Castle without a garage still. The garage is a welcome benefit in Town, and the proposal is for a single-car, modest garage.

Bill Soupcoff of TMS Architects presented the site plans. The northeastern side of the building already has a side entrance and mudroom area, so this was the logical place to attach a garage. The existing house is about 30 feet tall, and the height to the ridge of the garage would be approximately 19 feet. There are dense, 10 to 12 foot high arborvitae between the Applicants' home and the neighboring home, and two large pine trees on the back side of the proposed garage location would remain. This provides sufficient barrier between the properties. If the garage is taken off, neighbors would still be looking at the side of house, so there would be no impact to views. Mr. Soupcoff acknowledged that the HDC thought the design was fancy for the simplicity of the house. Specifically, the Commission wanted the dormers and elliptical garage entrance to be removed. Alternate locations for the garage would not work due to the existing windows and internal configuration of the house. The Applicants have had preliminary discussions with the NHDES, but they would like to get the necessary zoning variances before going further. They also wanted to have input from the ZBA before returning to the HDC.

David Borden of 40 Walbach Street does not think the application is a good idea the way it was presented. He feels strongly that if there is a lot of concern from abutters, the ZBA should hesitate on issuing an approval. Mr. Borden urged the present owners to live in the building for a while to get a sense of it. He concluded that New Castle is a tightly woven community.

Attorney Michelle LaCount spoke on behalf of Mary Ann Driscoll. Attorney LaCount argued that the plans seem disingenuous because they do not accurately depict the true project scope. The garage would be at least 1.5 stories tall, not one story. The new structure is not a modest garage. It would leave very little space in the driveway and there would not be extra room between the Driscolls. There would only be 15.52 feet between the Applicants' garage and the left side of the Driscoll's home. Granting the variances would be contrary to public policy and would alter the essential character of the locality by allowing development on an older, small, nonconforming lot, by failing to limit lot coverage, and by allowing overbuilding in an already dense neighborhood. The proposal would alter the historic character and appearance of the neighborhood.

Attorney LaCount argued that the spirit of the Town Ordinances is not observed in this case. The proximity of the proposed structure to the Driscolls' home would significantly increase the risk of a fire spreading from home-to-home. Reducing the space between the homes will result in a lack of sufficient space for ingress/egress in the event of an emergency. Allowing the garage would drastically reduce the current amount of light on the south side of the Driscolls' home. Attorney LaCount also described privacy concerns given the apparent height of the proposed structure. The existing arborvitae do not provide much of a buffer, as they have only been there for three years and are not very tall. The trees between the properties are not very close together, and the large pine trees do not provide a buffer because they are in the back. In addition, the impervious surface area on the Applicants' lot would be increased, which would reduce drainage and may result in erosion during rainstorms.

Granting the variances would result in a substantial injustice to the abutters, as there is no legitimate purpose for disregarding the setback and buildable area requirements to allow the Applicants to build a garage. The proposed garage is a large and unnecessary addition, argued Attorney LaCount. The vast majority of houses on Cranfield Street do not have garages, and the ones that do are minimalistic and set back behind the homes.

The Applicants' garage would reduce the property values of surrounding properties. The south side of the Driscolls' home would look directly into a wall, and the homes directly across the street from the Applicants would have their water views significantly restricted. In support of Attorney LaCount's assertion that the proposal would decrease surrounding property values, she presented a letter submitted by Peter Stanhope, an experienced local appraiser. Having reviewed the plan, the Applicants' narrative, the Zoning Ordinance and tax maps, as well as inspecting the area, Mr. Stanhope concluded that granting the requested relief will expose neighborhood properties to diminution in value. He also pointed out discrepancies between the Applicant's lot size per the tax map and the engineer's plan.

The hardship facing the Applicants is not due to circumstances peculiar to their land. Their lot is not unique, as the parcel size is standard for the area and there are no sharp angles in its configuration. Further, no lot on Cranfield Street satisfies the 20,000 square foot requirement. Water frontage is rare, and because of that, Attorney LaCount argued that homeowners make sacrifices of size and other luxuries in order to enjoy the beautiful views. The Applicants purchased the home in July 2019 and have not moved in. She stated that if a garage was such a necessity to the Applicants, they should have purchased a different home. The Applicants have created their own hardship, and allowing them to build in violation of Town Ordinances would be an injustice to the community.

Mary Robbins has lived at 115 Piscataqua Street for 55 years. She commented on how she has seen many neighbors living in the home making a great impact in the community, without compromising space between neighbors. The Robbins' property is alongside the abutting Driscolls. Ms. Robbins argued that this area is historical, and that the space between houses is part of the character of New Castle. She is in support of the Driscolls and their right to the space, as well as the value of the space between houses and the ability to see the water. Ms. Robbins wants to safeguard the integrity of who we are as an Island. She felt disturbed to hear that the integrity and value of her property can be diminished.

Applicant Steve Joselow felt that it is mean-spirited to say that he and his wife should move if they do not like having no garage. He stated that they did not know there was this much opposition to the application. Ms. Lamb requested to hear more input from the neighbors. She said that she and her husband want to work together with their neighbors to find common ground. Mr. Joselow added that he is willing to just have a structure to put lawnmowers in.

George Almgren of 17 Cranfield Street has lived at that address for 63 years. He argued that the closeness of the properties and the height of the proposed structure would change the look of this historical part of New Castle. The view onto the Piscataqua River would be greatly obstructed. Therefore, he is opposed to the application.

Mary Tilney of 28 Cranfield Street has resided in New Castle since 1977. She echoed Mary Robbins' statements about how unique New Castle is. Residents value the ambiance of the village. Ms. Tilney tries to keep part of her property open, as she is grateful that she can still see the water from her property.

Timothy and Mary Ann Driscoll reiterated their concerns about the garage proposal. They noted how they have lived next door for 12 years, and that the garage crosses a line that should not be crossed.

Upon hearing strong opposition from numerous residents, Attorney Pelech withdrew the application.

**3. Case 2019-09. Stephen B. Johnson, owner of 23 Oliver Street, Map 16, Lot 24, has requested a variance from Article 4, Section 4.1.2 in order to place a 6' x 8' shed approximately one foot from the property lines.**

Stephen Johnson presented his application for a 6 foot by 8 foot pre-built shed to be placed approximately one foot from the left and rear property lines. The house was built in 1820 and is in the Historic District. Mr. Johnson noted that the home has virtually no basement, so he would like to have a shed to put equipment in. The lot is very small, so there is no easy place to put the shed. The shed would be placed as far back as possible in the back corner of the lot. This would make access to the rest of the yard easier. There would be no electricity or feeds going to the shed.

Mr. Johnson 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 proposed structure is a small garden shed. Mr. Johnson is trying to keep it as minimum as possible. The shed would be set directly on the ground, so there would be no foundation. The spirit of the ordinance is to ensure safe distances between dwellings and promote an uncrowded appearance. This is a small variance being requested and is in keeping with the spirit of the ordinance, while making the best use of the Applicant's land.

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

A six foot tall privacy fence already exists, so only the rooftop of the shed would be visible. The neighboring DeLeeuws and Audets have not voiced any objection to the proposal. There would be no diminution of property values.

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

The Applicant has a very small property lot and does not have a basement in which one can stand up. This makes it difficult to store garden tools and equipment. Placement per the five foot setback requirement would place the shed in the middle of the existing garden. Putting the shed in a different location on the lot would be hardship because the Applicant would have to continue putting equipment in the small space in the basement.

5. *Substantial justice is done:*

Mr. Johnson believes that his ability to better maintain and beautify his property is in the public interest and provides substantial justice.

Ms. Sofio commented how the shed is barely visible to neighbors. Since there are no neighboring objections, she is favorably inclined. Mr. Gardner feels that the request is reasonable. Mr. Fitzpatrick is in favor of approving the application. Mr. Lannon and Ms. Goldberg agree. Mr. Lannon motioned that having satisfied the five criteria for zoning relief, the variance as requested be approved. Ms. Goldberg seconded. Motion carried unanimously.

**4. Case 2019-10. Lawrence L. Witnzer, Trustee of Porthaw Trust, owner of 129 Wild Rose Lane, Map 3, Lot 1, has requested variances from Sections 9.2.4.1 and Section 7.1.2 in order to permit structures and alteration within the wetland setback.**

Attorney Phoenix presented the application on behalf of Vivian Campbell and Caitlin Phaneuf, who recently purchased the home. A fair amount of the existing home is in the wetland buffer. The Applicants would like to construct slight additions on the back of the home to enjoy the views of the Piscataqua River. Most of the proposed disturbance would be to already disturbed areas. The Applicants intend to construct a 560 square foot deck, 66 square foot open porch, 204 square foot enclosed porch, install a generator and sealed septic tank within the buffer, a leach field outside the wetland buffer, and install a pea stone walkway and footbridge, with associated regrading. Attorney Phoenix noted that the Planning Board will need to review the application for a conditional use permit for alteration/disturbance and structure within the 50 foot wetland buffer.

Corey Colwell of TFMoran gave further details about the project. There is a drainage ditch along the north side of the property that carries stormwater to an outlet drainage structure. The 50 foot wetland buffer runs through the middle of the house and yard. The proposal will enhance the buffer with proposed grading changes to contain the stormwater in the ditch. There will also be a berm going down to the wetland to further contain the stormwater. The septic system will be removed, and the leach field will be relocated about 85 to 90 feet away from the wetland. It is currently 25 feet away from the wetland and raised three to four feet high in the center of the yard. The leach field design has been approved by the NHDES already.

Post-construction, the raised leach field will be gone, native planting will be added, and a path will be added to the beach. The Applicants are also proposing to install a generator in the back of the garage, to be put on a concrete or stone pad within the 50 foot wetland buffer. Mr. Colwell noted that they have met with the Conservation Commission and have taken into account the Commission's suggestions to move the proposed path and change the discharge of the sump pump drain so that it is carried through plantings before going into the wetland. The Commission recommended approval of the application with the following stipulations: 1) a planting plan showing buffer plantings will be submitted to the Commission, 2) a performance bond be posted to assure the landscape plan is executed as diagramed in the plans, and 3) Commission members be permitted to return to the site two years after construction completion to ensure the plantings are functioning. Overall, Mr. Colwell stated that the wetland will be better served post-construction.

Attorney Phoenix 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 will not alter the essential character of the locality or threaten the health, safety, and welfare of the community. The deck and tasteful screen porch addition will not change the character or use of the existing home and will be in keeping with the surrounding neighborhood. The removal of the existing leach field and installation of a new septic system outside the buffer will improve the health of the surrounding wetlands. The building and lot coverage will remain compliant, and the proposed deck and stairs are less than three feet closer to the wetlands than the existing home.

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

The proposed tasteful improvements will increase the value of the property. The related site improvements will also improve wetland protection. Therefore, the proposal will not diminish the value of surrounding properties.

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

The lot does not meet existing lot size requirements and is significantly burdened by Shoreland Protection buffers and class B wetland buffers. The existing home encroaches upon the wetland buffer and the existing leach field encroaches upon the shoreland and wetland buffers. No improvements can be made to the lot or home without substantially similar relief. These factors combine to create special conditions. The new leach field with sleeved piping and the sealed septic tank are all improvements that will strengthen the wetland buffer. These have been approved by the Conservation Commission and the septic system has been approved by the NHDES. Therefore, no fair and substantial relationship exists between the general public purposes of the ordinance and its specific application in this instance. Further, the proposed use as a single-family residence is permitted and therefore is reasonable.

5. *Substantial justice is done:*

There is no benefit to the public that would outweigh the hardship to the Applicants in denying the variances requested. There is no conceivable harm to the public in allowing construction with a porch and deck on the rear of the home, or the addition of native plantings and an improved septic system. Given the home's setting within the wetland buffer with an existing deck, it is reasonable for the Applicants to enjoy the shore frontage through the use of a deck and enclosed porch. Substantial justice will be done by granting the variances.

Attorney Phoenix noted that the Applicants will be going back to the Conservation Commission next month to go over the planting plan for final approval. DES permits are needed for the proposed path and a wetland permit is needed for the foot bridge over the path. Mr. Colwell stated that they are waiting to submit the necessary DES applications until they have the relief necessary. The Applicants will proceed to the Planning Board for a conditional use permit, and then will submit the applications to the DES.

Chair Baker read a letter from Conservation Commission Chair Conni White, who noted that the proposal is a great improvement. No letters were received from neighbors.

Ms. Goldberg asked about the scale of the proposed deck. Attorney Phoenix responded that the Applicants want to enjoy the beautiful view of their backyard. On balance, the proposal is a great



improvement, and moving the septic system and propane tank is a fair tradeoff for being able to have a deck. Mr. Campbell commented that he envisions the deck being a place in the future for family to gather. He would like the deck size to be useful for this future use. The proposal safeguards the environment and adds to the property value.

Mr. Fitzpatrick is impressed with the improvements to the wetland and how the Applicants are working closely with the Conservation Commission. He is in favor of granting the variances. Mr. Lannon has walked the property before and is familiar with the challenges posed by the ditch area. He feels that the improvements to the culvert will be a great benefit to the town, and that the tradeoff in improving the property makes sense. Ms. Goldberg is also in favor and appreciates the work with the Conservation Commission. She would want to have the ZBA's approval be contingent on approval from the DES and Conservation Commission. Mr. Gardner has no issues with the application. Ms. Sofio is generally in favor and agrees that the Applicants have done a great job balancing interests. Chair Baker agrees and is in support of the application.

Mr. Fitzpatrick moved to approve the application as presented, having satisfied the five criteria for zoning relief, and contingent upon the Conservation Commission recommendations. Mr. Lannon seconded. Motion carried unanimously.

#### **5. Approve Minutes.**

Ms. Sofio moved to accept the October 2019 minutes as submitted. Mr. Fitzpatrick seconded. The motion carried unanimously.

#### **6. Set Date of Next Meeting.**

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

#### **7. 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 9:10 p.m.

Respectfully Submitted,

Meghan Rumph  
*Secretary*