

**APPROVED**

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**MINUTES OF THE NEW CASTLE ZONING BOARD OF ADJUSTMENT  
Tuesday, October 20<sup>th</sup>, 2020 – 7:00 p.m. (Recreation Building)**

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

**Members Absent:** Mark Gardner.

**Others Present:** JD Barker; Monica Kieser, Hoefle, Phoenix, Gormley & Roberts, P.A.; Christopher Mulligan, Bosen & Associates, PLLC; Alex Ross, Ambit Engineering; Curt Springer.

Chair Baker called the meeting to order at 7:00 p.m. Voting members of the Board are Chair Baker, Ms. Sofio, Mr. Lannon, Ms. Tanguay, and Mr. Fitzpatrick. Ms. Goldberg is an alternate.

**1. Case 2020-02. JD Barker, owner of 28 Colonial Lane, Map 12 Lot 5, has requested a variance from Article 4, Section 4.2.1 in order to allow the construction of a front porch that would exceed lot coverage allowed and encroach in the side and front setback.**

Attorney Mulligan presented Mr. Barker's application for a porch off the front of his home. He distributed updated existing conditions maps that show the bulkhead, AC unit, generator pad, and propane tank on the west side of the house. Mr. Barker added the AC unit last fall, but all other preexisting, nonconforming structures were there before Mr. Barker purchased the home from the Marples. Since the application was submitted at the end of September, Mr. Barker has decided that he will merge his lot (Map 12 Lot 5) with an adjacent abutting lot that he also owns (Map 17 Lot 16). This is an undeveloped lot. With the merge, Mr. Barker will no longer need relief for lot coverage, as the actual lot coverage with the proposed porch will be around 15% or less. Attorney Mulligan requested that the lot coverage part of the variance request be withdrawn. A notice of merger will be filed with the Planning Board.

Attorney Mulligan noted that Mr. Barker's property is a unique, double lot (Lots 4 and 5) that is almost twice as large as any other lot in that subdivision. The house is positioned toward the front of the lot because of ledge in the back. The front of the property between the house and Colonial Lane slopes significantly down to the roadway, which makes the space not easily usable. The house has a number of preexisting, nonconforming attributes, such as lot coverage, front and side yard setbacks, and frontage. In addition, the property is benefited by an easement on the western edge of Mr. Feigenbaum's and Ms. Nelsen's yard at 25 Colonial Lane. The easement allows for foot traffic access, landscaping, and the installation and maintenance of utilities. There is a stone walkway going through the easement.

Mr. Barker seeks to put a porch on the front of his property to provide a safe, accessible way to get to the front door and to serve as an area for visitors to gather. Attorney Mulligan noted that Mr. Barker is a best-selling novelist, and the front porch would allow him to visit with fans more safely by controlling the flow of people coming to the house. Because of the odd layout of the house, most visitors cannot easily ascertain where the front door is, and fans often approach the

side door near the garage, which is a very secluded area. The proposed porch would specifically direct people to the front door, where visits would be kept more in the public view.

Attorney Mulligan 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 essential characteristics of the neighborhood will remain residential. The proposed, covered porch will be fully integrated into and complementary with the existing dwelling. The health, safety and welfare of the public will be improved because the proposal will facilitate much safer access up the steep incline to the front door of the dwelling. This will improve access for first responders as well.

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

The proposal is part of a series of substantial improvements to the property. The exterior will be renovated, with new siding and landscaping that will make the structure code compliant and add to the value of the property.

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

The proposed porch is a residential use which is permitted and therefore reasonable. There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property. The purpose of the ordinance is to ensure adequate light, space, and access for the property, as well as to prevent overcrowding. None of this will be affected by the proposed project. There are also special conditions associated with the property that prevent the proper enjoyment of the property under the strict terms of the zoning ordinance and thus constitute unnecessary hardship. The house was built in the 1950s and has been added on since then. The structure is already nonconforming, and nothing can be done to the front of the home without requiring additional relief. The topography of the lot distinguishes it from other lots in the area. The building is located in the front yard setback due to ledge in the rear of the property. There is also an easement in the side yard, which mitigates some of the encroachment into the side setback. The lot is also much larger than others on Colonial Lane. Colonial Lane has not been built out according to the 1954 subdivision plan, and Attorney Mulligan stated that Mr. Barker arguably owns up to the middle of the street.

5. *Substantial justice is done:*

The proposed porch will facilitate safer and more direct access to and from the main living area. The setback relief requested is for a property that is already nonconforming, and the front of the yard does not have any usable value to anyone due to the steep slope. There is no benefit to the public in denying the variance that is not outweighed by the hardship upon the owner, and therefore substantial justice will be done by granting the variance.

Ms. Tanguay asked about the stairways, and Mr. Ross confirmed that there would be three stairways to the proposed porch, as the stairs would be going on top of existing pathways. Mr. Barker added that there are currently pavers where the proposed porch would be located.

Ms. Goldberg asked how the properties are deeded. Attorney Mulligan did not believe that the properties are deeded to the center of Colonial Lane. The unbuilt portion has not been technically deeded by the Town of New Castle. He also distributed copies of the easement deed from 2010, and noted that what is being encroached upon is not actual living space, nor is it in the neighbor's front yard. Ms. Sofio asked if Mr. Barker required a variance for expanding an existing, nonconforming structure. Attorney Mulligan did not believe this would be needed, as it was not mentioned in the Building Inspector's denial letter.

Chair Baker opened discussion to the public. Curt Springer of 98 Cranfield Street spoke in favor of the proposal, stating that it fits with the neighborhood and will be an asset. He noted that other neighbors have front porches as well.

Attorney Monica Kieser spoke on behalf of Wayne Feigenbaum and Jane Nelsen of 25 Colonial Lane. She discussed the easement, noting that the former homeowners did not use the stairs in that area because they were overgrown, and since they walked back and forth over the area so often, an easement was established to resolve any disputes over ownership. Attorney Kieser argued that just because there is an easement does not mean that the use of that area can be intensified. She noted that there have been a series of encroachments on the left side of the property already, such as the generator and propane tank, which were not put in with any permits of zoning relief. She acknowledged that these alleged violations took place before Mr. Barker bought his property. Mr. Feigenbaum and Ms. Nelsen cannot support any further encroachment.

Furthermore, the structure is being made more nonconforming. While Attorney Kieser understood the need for the stairs, she did not believe the desire to have a formal entrance to the house was the type of hardship that the Zoning Board should approve. She argued that there is no reason to have an additional elaborate set of stairs going to the front of the porch in addition to continued access over the easement area. Attorney Kieser pointed out disparity between the original 1954 plans and the configuration of the Barker lots today. She noted that this is important because Mr. Feigenbaum has some rights to the extension of the property line as well. Attorney Kieser described confusion about where the public right of way is and who has rights to the non-traveled area of the road.

Chair Baker asked if the generator and propane tank could be put into the easement area. He pointed out that if Mr. Feigenbaum is upset with accessory structures, such as the generator and propane tank, that are already there, he could bring this up to the code enforcement officer. Attorney Kieser argued that the easement is not for the permanent installation of utilities, as these would need to be more proximate to the house and should not be placed on someone else's property.

There was discussion about work being done to install granite curbing and stairs. This was agreed upon by the Select Board. Attorney Kieser believes this area may actually belong to Mr. Feigenbaum, but the Town proceeded with the agreement nonetheless. Mr. Barker commented that he paid for all of this work to be done and the Department of Public Works agreed that it

will be to the benefit of everyone, particularly as it will help with snowplowing in the winter. He added that he spoke with the Marples, from whom he bought the house, and they stated that they worked with previous Building Inspector Don Graves to get permits for the propane and generator back in 2006 when they were installed.

Attorney Kieser argued that from a separation standpoint, the proposed porch will be more imposing because Mr. Barker's house is already situated higher up on a hill. She claimed that there is no hardship that would support the need for a front porch of that size and shape encroaching into the setback. She pointed out that Mr. Barker would have a set of stairs on the north, east and west sides that would be coming off a structure that already intrudes into the front yard setback. Mr. Barker responded that the steps would be placed exactly where there are existing steps which go to existing pathways. Attorney Mulligan added that it is not reasonable to shift the porch as far over as possible to maintain the setback because it will not look aesthetically correct. He also stated that the propane and generator were installed before Mr. Feigenbaum even bought his house.

Chair Baker read a letter from Steven Wilson of 27 Colonial Lane. Mr. Wilson wrote that he does not object to Mr. Barker's request for a variance. Chair Baker also read a letter from Carol White of 40 Vennard's Court, who was in complete agreement with Mr. Barker's proposal and felt that it will be an attractive addition in keeping with the traditional New England style homes in the area. Hearing no further public comment, Chair Baker closed the public session at 8:10 p.m. and opened discussion to the Board.

Ms. Tanguay stated that while she understood the desire for the front porch, it was unfortunate that a mutual agreement could not be found between Mr. Feigenbaum and Mr. Barker. She felt that the proposal to merge Mr. Barker's lots will help, but wonders if the porch has to be as long as what is proposed. Overall, she understood Mr. Barker's motivations but was unsure if it qualified as hardship for the Zoning Board's determination.

Ms. Goldberg agreed with Ms. Tanguay, pointing out that taking the coverage issue off the table was helpful in easing the burden. She expressed difficulty in getting over the hardship prong. Ms. Goldberg added that the propane tank and generator disputes were distractors that were not relevant for the Zoning Board.

Mr. Fitzpatrick agreed that the generator and propane tank were not relevant to the application for a front porch. He acknowledged the history between the lots, and felt there is hardship because of the topography of Mr. Barker's lot. Mr. Fitzpatrick stated that the porch design was tasteful and he felt the proposal met all the criteria for zoning relief.

Ms. Sofio commented that she could see the special conditions of the property in terms of the severe slope, and was sympathetic to the concerns for safety and the desire for privacy. She felt the tasteful porch is a better alternative than having to fence the whole yard. Ms. Sofio acknowledged that there are issues in terms of how to get into the house, and felt that the proposed steps will make a difference. She did not believe the project would be a huge encroachment and stated that it was a shame that the neighbors could not work something out. Mr. Lannon also felt that it was unfortunate that the situation could not be resolved between neighbors. He did not believe that there would be a smaller version of the porch that the abutters

would agree with, and felt that there has been an accumulation of disagreements that have added up between neighbors. On the face of it, the addition is fairly straightforward, and the existing setback constraints make it difficult, in Mr. Lannon's opinion. He wondered if there would be objections under different circumstances.

Chair Baker went through the criteria for zoning relief. The proposal would not alter the character of the neighborhood, nor would it diminish the health, safety, and welfare of the community. The health, safety, and welfare would be improved at least for the Applicant, as the existing front door and steps are not seen as a primary entrance. Substantial justice will be done, and with the possible exception of the opposing abutter, the Town would not be harmed if the variance is granted. The values of surrounding properties would not be diminished with the proposed front porch. Literal enforcement of the ordinances would result in unnecessary hardship because it is a large lot built on a steep slope very close to the road, and having a front entrance is a reasonable request. There is no fair and substantial relationship between the general provisions of the ordinance and its specific application to this case. Chair Baker acknowledged that the neighbor has a right to have some space between the two homes. When weighing between the Applicant and the abutter, he stated that he is more sympathetic with the Applicant in this case. Chair Baker concluded that he would support approval of the variance, as he felt that all five criteria are met in this case.

Mr. Fitzpatrick motioned to approve the setback variance, having met the five criteria for zoning relief, on the assumption that the Applicant merge his two parcels (Map 12 Lot 5 and Map 17 Lot 16). Mr. Lannon seconded. Motion carried unanimously.

## **2. Approve Minutes.**

Mr. Lannon moved to accept the July 2020 minutes as submitted. Ms. Sofio 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, November 17, 2020 at 7:00 p.m.

## **4. Adjournment.**

There being no further business, Mr. Lannon moved to adjourn the public meeting. Ms. Sofio seconded. The motion carried, unanimously, and the meeting adjourned at 8:30 p.m.

Respectfully Submitted,

Meghan Rumph  
*Secretary*