

**MINUTES OF THE NEW CASTLE ZONING BOARD OF ADJUSTMENT
Tuesday, July 20th, 2021 – 7:00 p.m. (Recreation Building)**

Members Present: Todd Baker, Chair; John Fitzpatrick; Mark Gardner; Rebecca Goldberg; Margaret Sofio; Matt Taylor.

Members Absent: Ben Lannon, Alyson Tanguay.

Others Present: Tama Andrews; Christopher and Kulli Barrett; Patience and Tom Chamberlin; Derek Durbin, Durbin Law Offices; Lisa Levasseur; Darryl Mojdehi; Joan Nickell; Terrence Parker, Terra Firma Landscape Architecture; Anne Whitney, Anne Whitney Architect.

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

1. Case 2021-04. Darryl Mojdehi and Lisa Levasseur, owners of 33 Riverview Road (Map 16, Lot 12) have applied for a variance from Article 4.2.1 Table 1 Row C – Building Setback in order to permit construction of a utility shed.

Darryl Mojdehi presented his plans for a 160 square foot utility shed at the rear of the property on 27 Riverview Road. The shed would be five feet from the side of the property line and three feet from the rear property line. Mr. Mojdehi read a narrative to address the five criteria for zoning relief. The lot size and shape are odd, so placement of the shed is paramount to balancing the existing structures from all viewpoints. The placement will allow the structure to remain clear for future maintenance issues to two “limited space” septic systems adjacent to one another at both 33 and 27 Riverview Road. Mr. Mojdehi did not want the shed to appear as an afterthought. He emphasized the importance of it being aesthetically appealing to the community and its neighbors, while adding charm and value to the property. The shed will use the same siding, color, and roof shingle type as the home at 27 Riverview Road. Mr. Mojdehi noted that he shared the plans with several neighbors, all of whom were in favor of the proposal. He felt that the shed would add value to the community while not imposing itself as an out-of-place structure.

Ms. Goldberg asked about the property address. Mr. Mojdehi clarified that he and Ms. Levasseur own the properties at both 27 and 33 Riverview Road. There are two separate homes, and the applicants live at 33 Riverview Road. Ms. Sofio questioned whether there would be plumbing. Mr. Mojdehi responded that they have no plans for plumbing in the shed, and the purpose of the shed is solely to provide a space for equipment to maintain the property at 27 Riverview Road. He added that the lot is fairly large and does not have a garage. The shed will be set back on the property. Mr. Taylor asked about the arborvitae near the proposed shed. Mr. Mojdehi stated that he wanted to do his best to save the trees and not remove them.

Mr. Mojdehi stated that he will go before the Historic District Commission at the next meeting. He explained that he did look at alternative locations for the shed, but the other locations would be too obtrusive to the street, and he did not want it to be a burden on anyone. The shed’s proposed location is set back from the driveway and also considers the future septic system, as

Mr. Mojdehi has approval for a septic system upgrade at 33 Riverview Road. He also did not want to put in something that was inappropriate. The shed will be built by Reeds Ferry in Hudson, NH, who have a very good reputation and construct the shed in-house, according to Mr. Mojdehi. The shed will sit on crushed stone, so there will be no need to pour concrete.

Chair Baker opened the hearing to the public at 7:20 p.m. Tama Andrews, 20 Riverview Road, spoke in favor of the variance request. She lives across the street and felt that Mr. Mojdehi and Ms. Levasseur have been improving the exteriors and landscaping of the properties at 27 and 33 Riverview Road. Ms. Andrews appreciated the applicants' concerns about respecting the neighborhood, and noted that they have put in a lot of work on the properties. She felt that the shed is placed perfectly and will not impact the overall streetscape. Ms. Andrews added that it will be a good utilization of storage for tools needed to maintain the property.

Patience and Tom Chamberlin, 49 Riverview Road, spoke in favor of the application. They stated that Mr. Mojdehi and Ms. Levasseur have done a nice job positioning the shed in the least intrusive spot, and liked how the shed matches the style and scale of the neighborhood.

Hearing no further comments from the public, Chair Baker closed the public hearing at 7:24 p.m. and opened discussion back up to the Board. Ms. Goldberg stated that she was inclined to grant the variance because it has met the five criteria. She finds value in preserving open space. Ms. Goldberg noted that she would have liked for the backyard abutters to have been contacted directly, as they would likely be the most impacted by the variance request. Chair Baker pointed out that the backyard abutters were notified of the application.

Ms. Sofio agreed with Ms. Goldberg's analysis, and felt that given the support of the surrounding community, the request is in the public interest and the spirit of the ordinance is observed. She appreciated Mr. Mojdehi's desire to keep the trees and plantings that are established. Ms. Sofio did not find any evidence that the surrounding property values would be diminished. She found that literal enforcement of the provisions of the ordinance would result in the shed being in the middle of the open space, and would possibly require the removal of some trees. Mr. Fitzpatrick, Mr. Gardner, and Mr. Taylor all agreed and were in favor of granting the variance request.

Ms. Sofio motioned to approve the application as submitted for Darryl Mojdehi and Lisa Levasseur, 27 Riverview Road (Map 16, Lot 12), for a shed with no plumbing placed to the rear of the house as shown on the survey submitted with the application. Mr. Fitzpatrick seconded. Motion carried unanimously.

2. Case 2021-05. Christopher and Kulli Barrett Rev. Trust, owners of 40 Riverview Road (Map 16, Lot 17) has applied for a variance from Article 7.3.1 and 7.5.1 in order to permit rebuilding the existing garage within the setback with lot coverage of 32.7% where 25% is permitted.

Anne Whitney, architect for the project, presented. The existing home is a cape with a garage tight to the property line. The proposal is to remove the garage and two one-story bump-outs off the house, and to replace the garage and add a one-story addition. The existing garage is built without a foundation and is over the property line at the rear right side. The proposed garage will

utilize the location of the existing garage but will bring it forward about six feet and would be 0.6 feet from the side setback. The new garage will include a breezeway area to provide a better connection to the house. The proposed roof will be a low pitch hip roof less than 12 inches higher than the existing garage roof. There would be a crushed stone drip edge and possibly a dry well to contain water runoff from the garage. The structure is currently on posts and water runs into the backyard. The site will be accessed from the back of the house, which will mean minimal impact on the abutter's property. Per building code, the garage cannot have windows given its proximity to the property line. Ms. Whitney noted that the applicants originally wanted a two-story garage, but it would have been too much of an imposition to abutting neighbors, so they changed the plans to a one-story garage. Because of the grade drop, the Barretts can potentially have a finished space in the basement area. Ms. Whitney stated that the building lot coverage is currently at 29%, including the paved driveway. The proposal will increase the lot coverage to 32.7%, which represents a 276 square foot increase.

Ms. Sofio asked if the applicants need to go before the Historic District Commission. Ms. Whitney responded that they wanted to go before the Zoning Board first and then go to the HDC. The Barretts also need a permit from DES. Chair Baker asked if the home was serviced by public water and sewer, which Ms. Whitney confirmed. Ms. Goldberg wondered if the structure met the building area requirements. Ms. Whitney stated that the home is below the permitted building area.

Mr. Taylor asked whether pervious pavement was considered for the driveway. Ms. Whitney explained that the driveway area is well outside the 250 foot buffer, but the applicants can consider this to help with the lot coverage. Mr. Taylor also asked about the condition of the shed in the corner of the lot. Ms. Whitney commented that the shed is not in great shape, and Mr. Taylor suggested that removing the shed could help with the lot coverage issue as well.

Ms. Whitney 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:*

All of the abutting lots are nonconforming in lot size, and many have additions to the original house. The expansion is compatible with the neighborhood. The one-story proposal with low pitch hip roofs will minimize the impact to abutters. The expansion is consistent with abutting properties and will allow better use of the small residence without undo harm to abutters.

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

The proposal will improve the property and stay in context with the neighborhood. There will still be a lot of yard space around the garage.

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

Special conditions exist because of the location of the existing garage and the nonconformity of the lot, particularly with the small lot size. The garage is sitting in the right side setback, and because of the grade difference, it would be very difficult to relocate the garage to the other side of the lot.

5. *Substantial justice is done:*

Substantial justice is done, as the benefits of the project to the applicants outweigh any detriment to the public.

Chair Baker opened the hearing to the public at 7:51 p.m. Attorney Derek Durbin spoke on behalf of Joan Nickell of 34 Riverview Road. He stated that while Ms. Nickell is not necessarily in opposition to the application, she is concerned about the drainage associated with the downgrade area. By putting in a foundation and being so close to the common boundary line, water will likely be diverted onto Ms. Nickell's property. Attorney Durbin proposed a condition of the Zoning Board approval to stipulate that a drainage plan be submitted to the Town Engineer for approval. Another concern of Ms. Nickell is having windows being placed on the side of the building along the property line. Attorney Durbin would like a condition that no windows be placed on that side of the building to address privacy concerns. He noted that per Ms. Whitney's comments, the building code prohibits windows on that side anyways. Attorney Durbin added that Ms. Nickell is also concerned about access to the site and having to cross her property. Ms. Whitney responded that the garage can be taken down from the front and worked on from the back, so there would be no need to have equipment crossing onto Ms. Nickell's property. She noted that there may be a foot of encroachment while the footings are installed.

Ms. Goldberg asked about discussions between the abutter and applicant about the drainage issue. Attorney Durbin did not believe there had been any discussions since the initial stages of the project. Ms. Whitney commented that Ambit Engineering is already working to address drainage on the property. She felt that all of Attorney Durbin's concerns can be addressed.

Hearing no further comments from the public, Chair Baker closed the public hearing at 8:02 p.m. and opened discussion back up to the Board. Mr. Taylor asked about the distance between the garage and the lot line. Ms. Whitney responded that it would be about half a foot from the structure. Mr. Gardner felt that the access issues outlined by Attorney Durbin should not be part of the ZBA's decision, as that is not within the ZBA's purview. He was inclined to approve the proposal provided that the applicants agree to the stipulations as set forth by Attorney Durbin. Mr. Fitzpatrick commended the neighbors for working out their concerns together and was in favor of the conditions proposed by Attorney Durbin. Ms. Sofio was also in favor, though she would have liked to see the finalized drainage and access plans. Ms. Goldberg commented that she appreciated the value of articulating in a public proceeding what the parties have agreed to in terms of windows on the proposed structure. Chair Baker encouraged including a condition that the pavement be permeable, as suggested by Mr. Taylor, in addition to the conditions about drainage being addressed by a licensed engineer and no windows on the side of the garage. He felt that all five criteria had been met.

Mr. Fitzpatrick motioned to approve the application of Christopher and Kulli Barrett Rev. Trust, owners of 40 Riverview Road (Map 16, Lot 17) with three conditions: 1) that the driveway be permeable, 2) that no windows be placed on the side of the garage along the property line, and 3) that the drainage on site be addressed by a licensed engineer. Ms. Goldberg seconded. Motion carried unanimously.

3. Case 2021-06. Michele Grennon, owner of 98 Beach Hill Road (Map 10, Lot 31) has applied for a variance from Article 6.8.1-2 in order to permit building a 7 foot high privacy fence, where 6 foot high fence is permitted.

Landscape architect Terrence Parker presented on behalf of Michele Grennon. Ms. Grennon had initially worked with Mr. Parker about ten years ago on the proposed fence, but put the project on hold. She had wanted an eight foot high fence, but dialed this down to seven feet after conversations with the Town Building Inspector. The fence would be a highly detailed, decorative basket-weave fence.

Mr. Parker explained that the fence would be set back from the road and angled at the driveway to alleviate concerns about sightlines from the driveway. The fence would not block anyone's view of the street or surrounding seashore. The fence length would only be 28 feet long across a frontage of 140 feet, and is only located where Ms. Grennon needs it to be to create privacy for the home. The fence would be in front of the interior kitchen and a private outdoor garden. Mr. Parker noted that all abutters have seen the drawings of the proposed fence and have raised no objections. He added that Ms. Grennon is very conscientious of getting approval of her neighbors.

Mr. Fitzpatrick pointed out that the application is for a variance from Article 6.8.1-2, but it should have been a request for a Special Exception based on the letter submitted by the Town Building Inspector. Chair Baker read the requirements for Special Exceptions from the Zoning Ordinances, and concluded that abutters were not properly notified. He advised Mr. Parker to withdraw the application and come before the Zoning Board again with the correct application. Mr. Parker withdrew the application and will return to the Zoning Board as advised by Chair Baker.

4. Approve Minutes.

Mr. Gardner moved to accept the May 2021 minutes as submitted. Mr. Taylor seconded. The motion carried unanimously.

5. Set Date of Next Meeting.

Chair Baker announced that the next Zoning Board of Adjustment meeting will be held on Tuesday, August 17, 2021 at 7:00 p.m. at the Commons.

6. Adjournment.

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

Respectfully Submitted,

Meghan Rumph
Secretary