

**MINUTES OF THE NEW CASTLE ZONING BOARD OF ADJUSTMENT**  
**Tuesday, September 21<sup>st</sup>, 2021 – 7:00 p.m. (Recreation Building)**

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

**Members Absent:** Mark Gardner.

**Others Present:** Beth Barnhorst; Jim Cerny; Scott Dylla; Jackie and Robert Estabrook; Jane Finn; Terri Golter; John Maniscalco, John Maniscalco Architecture; Timothy Phoenix, Hoefle, Phoenix, Gormley & Roberts, P.A.; Chris Ragusa, CM Ragusa; Eric Weinrieb, Altus Engineering.

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

**1. Case 2021-08. DNH Estates, LLC, and its principals, Scott and Melodie Dylla, owners of 149 Wild Rose Lane (Tax Map 3, Lot 2A) have applied for a variance from Article 4 Table 1, District 3A in order to allow a building height of 34.7' where 32' is permitted.**

Attorney Timothy Phoenix presented on behalf of Applicants Scott and Melodie Dylla. Also present were Eric Weinrieb, engineer for the project, architect John Maniscalco, and builder Chris Ragusa.

The existing two and a half story home is approximately 38 feet in height and occupies a 4,000 square foot building footprint. The structure is in poor condition, so the Dyllas would like to remove the current home, guest home, and many features such as the septic systems, tennis court, and much of the impermeable paved driveway. Doucet Survey performed boundary and topographic surveys of the lot, and Michael Cuomo delineated wetland setbacks and the highest observable tide line (HOTL). Attorney Phoenix stated that a new flood plain map was enacted nine months ago, and the Applicants' plans reflect the new FEMA maps. Mr. Weinrieb described where the proposed house and carriage house fall within the flood plains.

A portion of the existing home and the entire carriage house are located in the flood zone. The existing septic system for the carriage house is within the wetland buffer, and the current septic for the main house consists of a tank with a pipe to the ocean. This has been closed off and is no longer in use. The proposed home will use the existing water line and will have fire protection. There is no municipal sewer on the street, so the Applicants have had test bits done on site to find suitable areas for a new septic system. The septic system will be installed outside of the flood zone and wetland buffer. It will be raised and have a reduced footprint with advanced monitoring systems that require periodic testing with the manufacturer.

The entire main house will be moved outside of the flood zone, and the guest house will be entirely outside of the flood zone and wetland buffer. The primary structure will utilize a geothermal heating and cooling system, and will have roof-mounted photovoltaic solar arrays.

The roofline will be approximately 3.4 feet lower than the existing home. The driveway to the guest house will be a permeable surface, and a significant portion of the existing paved driveway will be removed. The proposed driveway will be in the same location as the existing one, and will have permeable walkways. The existing stone wall along Wild Rose Lane and the waterfront will remain and will be repaired as needed.

Attorney Phoenix explained how significant portions of the manicured lawn will be restored to an open expanse of New England grasses and wildflower seed mix, which will support pollinators and provide habitat for birds, while also allowing onsite water treatment. Many of the existing trees will be maintained. A landscape architect is working on the landscaping plans for the site.

The Applicants will need two septic system permits, an alteration of terrain permit, and wetlands and shoreland permits from the NHDES.

Mr. Maniscalco, the architect and principal designer for the property, explained the goal of optimizing the experience of the site. The current site is dominated by driveways and the centrally placed tennis court. The Applicants would like to restore the site to a natural environment. The design will lower the height of the primary home significantly, while following the topography of the land appropriately and allowing views to the Piscataqua River. The garage and portions of the proposed home will be partially underground. There will be berms, landscaping and terraced green spaces on top of the garage. The entrance to the garage will not be visible from the public right of way. The proposed home will have cedar siding and will utilize some of the rocks from the existing house. Mr. Maniscalco explained how the proposed structure will be broken down into a one story volume and two, two story volumes. This will reduce the mass of the house and spread it topographically, whereas the existing home occupies a large mass and blocks views of the water. Mr. Dylla added that part of the reason for the sloped roof is to allow solar panels on the south side of the house to make it as energy efficient as possible.

Ms. Tanguay asked about the existing grade. Attorney Phoenix referenced Exhibit B, which showed the grade calculations, and explained how they are calculated under the New Castle Zoning Ordinance. The average grade will be lower by a couple of feet because of the underground garage.

Attorney Phoenix concluded that the Applicants will be improving the environmental conditions of the home significantly, through solar and geothermal features as well as the proposed meadow. The proposed structure works with the land and topography. The impact of the house height will be reduced given that the home will sit 280 feet from Wild Rose Lane and will have front terracing.

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 slight height variance is only for a small area at the top of the two pitched roofs, and will not be noticed given the proposed home's location. The variance satisfies the objectives, authority, and purpose of the Zoning Ordinance. The project will vastly improve public health, safety, and welfare by getting rid of outdated septic systems, removing pavement and other hard surfaces,

moving the house and guest house outside of the flood zone, and adding environmentally friendly features such as solar panels. The essential character of the locality will not be altered, as the houses on Wild Rose Lane are eclectic and of varying types.

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

The project improvements will increase the value of the property and will not diminish surrounding property values. The support letters from abutters attest to this as well. The related site improvements will also improve wetland and river protection.

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

Special conditions exist that distinguish the property from others in the area. The lot is large but is significantly burdened by shoreland and wetland buffers and flood zones. If the Applicants were to use the existing home, they would have to raise it significantly to be compliant with the flood zones. No fair and substantial relationship exists between the general public purposes of the ordinance and its specific application in this instance. The height restrictions are to preserve adequate access to light and air, prevent overbulking, and preserve sightlines. Given the large lot size and that the proposed home would be 280 feet from the street, there is no reason to strictly apply the height limitation in this instance. The proposed home will be less bulky and have less mass than the current house. The proposed use is reasonable, as the property will remain a single-family residence with an accessory dwelling unit.

5. *Substantial justice is done:*

There will be no gain to the public from denying the single variance and no harm to the public in granting the variance. The project will replace the home with one that is code compliant and energy efficient. Denial of the variance will cause great harm to the Dyllas because they will be unable to construct the home and other features that they desire, which would result in an unconstitutional taking.

Ms. Goldberg commented that the level of detail and the depth of the engineering work is very impressive, and she appreciated the environmental benefits of the proposal. She asked about the proposed roof height and whether it could be made compliant. Mr. Maniscalco explained that the new house has limited buildable space because of the flood area. The average grade plain dropped because of the need to dig down for the garage, which creates the need for the variance. Dropping the height of the house would render the roof pitch lower than the desired 1 to 3 ratio.

Ms. Tanguay stated that while she really appreciated the rendering work in the exhibits, she would have liked to see how the proposed home would look from the water side and from other Town property such as the Commons. Mr. Maniscalco showed a rendering of the proposed house from the water. He explained that the goal is to reduce the scale of the house and tie it into the landscape by creating a meadow rather than keeping the manicured grass. Ms. Tanguay liked how the proposed retaining wall would not be as visible from the water side. She asked about the building area coverage and whether any variances would be needed for this. Attorney Phoenix clarified that no additional variances would be needed for the proposal. Mr. Weinrieb explained that the Town Building Inspector previously informed the Dyllas that the green areas, such as the roof on top of the garage, are counted as impervious surface areas. Overall, the impervious

surface area will be drastically reduced. Mr. Maniscalco added that the current above ground footprint is approximately 5,800 square feet, and the proposed footprint is 9,000 square feet.

Mr. Taylor asked about the adjacent lot. Mr. Dylla responded that he owns both lots but is keeping them separate. All calculations for this variance request are based on the primary lot only. Mr. Weinrieb added that the plan is to till the soil and restore the meadow in the second lot. The only permit that will be needed for the second lot is a DES permit to repair the seawall.

Chair Baker opened the public hearing at 7:53 p.m. Terri Golter, 17 Locke Road, asked how many stories the guest house will be. Mr. Dylla responded that it will be one story. Beth Barnhorst of 14 Pit Lane expressed concern about the precedent of allowing a structure to be higher than permitted under the Town Ordinance. She felt that this could change the character of New Castle.

Chair Baker read letters from abutters, all of whom were in support of the application and had no objections. The letters received were from Dwayne and Christine Baharozian, 136 Wild Rose Lane, Edward and Penny Glassmeyer of 166 Wild Rose Lane, Vivian and Caitlin Campbell, 129 Wild Rose Lane, John Morris, 120-B Wild Rose Lane, and Spence and Caroline Lockhart of 174 Wild Rose Lane.

Hearing no further comments from the public, Chair Baker closed the public hearing at 8:00 p.m. and opened discussion back up to the Board. Ms. Sofio is in favor of granting the variance, and felt that the proposed building height will be de minimis and have an overall shorter profile. She noted that while the home will be a significant piece of architecture in town, she did not think two feet one way or another will make a difference.

Ms. Goldberg stated that she was on the fence. While she was very sympathetic to the request being only two feet higher than the permitted building height, she was a little troubled by the lack of evidence for the unnecessary hardship prong. Ms. Goldberg felt that the hardship may be self-imposed. She reiterated how she appreciated the amount of time and resources that have gone into the application.

Ms. Tanguay commented that the proposal was great, but she was struggling with the hardship piece. She felt that proximity to the coast and wetlands is not a reasonable argument for a hardship, as this is preexisting to the development of the lot. Ms. Tanguay appreciated the thoroughness of the proposal.

Mr. Lannon was predominantly in favor of the request. He highlighted how the lot and house have a very well-known presence in town. He appreciated the intent of the design and how the proposed building height will only be a minimal amount above the requirement. Mr. Lannon also appreciated the intent to minimize obstruction of views and work with the land. Overall, the home will be less nonconforming than with the existing conditions. He felt that the support of abutters played an important piece in the proposal. Mr. Lannon found that the wetlands was a hardship unique to the property, and he appreciated how the design of the home was accommodating to the surrounding landscape with the flood zones.

Mr. Taylor agreed with Mr. Lannon and appreciated the degree of thought that went into the design. Overall, he was in support of the variance request, and commented that his analysis would be different if the Applicants needed a variance for building coverage as well.

Mr. Fitzpatrick was in favor of granting the variance request. He agreed that the proposal will look a lot different from the current home, but pointed out that this is not in the purview of the ZBA. He liked how the building height will consist of two discrete pieces.

Chair Baker agreed with Mr. Fitzpatrick's comments and felt that the criteria have been met. Chair Baker stated that the property is unique. The height variance when 280 feet from the street is very different than a height variance for a house that is right on top of the road. This makes it a unique condition of the property.

Mr. Fitzpatrick motioned to approve the application of DNH Estates, LLC and its principals, Scott and Melodie Dylla, owners of 149 Wild Rose Lane (Tax Map 3, Lot 2A) for a variance from Article 4 Table 1, District 3A in order to allow a building height of 34.7' where 32' is permitted, having met the five criteria for zoning relief as outlined in Attorney Tim Phoenix's memorandum. Mr. Lannon seconded. Motion carried by a vote of four to one.

### **3. Approve Minutes.**

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

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

Chair Baker announced that the next Zoning Board of Adjustment meeting will be held on Tuesday, October 19, 2021 at 7:00 p.m. at the Commons.

### **5. Adjournment.**

There being no further business, Mr. Fitzpatrick moved to adjourn the public meeting. Ms. Tanguay seconded. The motion carried, unanimously, and the meeting adjourned at 8:13 p.m.

Respectfully Submitted,

Meghan Rumph  
*Secretary*