

**MINUTES OF THE NEW CASTLE ZONING BOARD OF ADJUSTMENT**  
**Tuesday, November 16<sup>th</sup>, 2021 – 7:00 p.m. (Macomber Room)**

**Members Present:** Todd Baker, Chair; John Fitzpatrick; Mark Gardner; Ben Lannon; Margaret Sofio.

**Members Absent:** Rebecca Goldberg; Alyson Tanguay; Matt Taylor.

**Others Present:** John Bosen, Bosen & Associates PLLC; Corey Colwell, TF Moran, Inc.; Derek Jolie, DS Jolie Landscapes.

Chair Baker called the meeting to order at 7:05 p.m. Voting members of the Board are Chair Baker, Mr. Fitzpatrick, Mr. Gardner, Mr. Lannon, and Ms. Sofio. Chair Baker announced that he is currently working on a project with Corey Colwell of TF Moran, Inc., but he did not believe that this would influence his decision.

**1. Case 2021-09. Porthaw Trust, owner of 129 Wild Rose Lane (Tax Map 3, Lot 1) has applied for a variance from Article 4, Section 4.2.1 Table 1, Row C in order to allow construction within the 20' rear setback of a plunge pool, stone wall, and sauna.**

Attorney John Bosen presented on behalf of Porthaw Trust and Applicants Vivian and Caitlyn Campbell. Also present were Corey Colwell, the project engineer from TF Moran, and Derek Jolie, the landscape architect from DS Jolie Landscapes. The Applicants seek to build a seven foot by 15 foot plunge pool, a 55 square foot sauna, 939 square foot permeable stone patio, and 80 square feet of stone walls. The plunge pool would be 18.2 feet from the side yard setback, the sauna would be 16.6 feet from the setback, and the stone wall would be 15.8 feet from the setback, where 20 feet is required. The improvements requiring relief are part of a larger project to renovate the existing structures and grounds, including the construction of a second garage and connecting structure, the installation of a rain garden and driveway, and permeable walkways and other landscaping.

The property is an irregularly shaped 1.42 acre parcel and is nonconforming in lot area. There is a man-made drainage ditch on the northern border of the property, which runs from Wild Rose Lane to the Piscataqua River and creates a 50 foot wetland setback. The main dwelling and garage partially encroach into this setback.

Attorney Bosen 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:*

There would be no change to the essential characteristics of the neighborhood. The proposal poses no threat to the public health, safety, and welfare. The proposal is designed to complement the existing home and new garage. The proposed plunge pool, sauna and stone walls will be shielded from the public right of way, as they will be set back from the road. Furthermore, there will be a fence to provide a screen from the nearest abutter.

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

The proposed plunge pool, sauna, and other improvements are part of a larger exterior renovation project to update the dated property. The renovations will increase the Applicants' property value and would not negatively impact surrounding property values in any way.

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

There are special conditions of the property that prevent its proper enjoyment and thus constitute unnecessary hardship. The property is an irregular "reverse pork chop" shape that is burdened by wetlands setbacks from the Piscataqua River and from the man-made drainage ditch. This limits the area in which reasonable improvements can be made to the lot. The proposed improvements are consistent with the existing residential use. There is no fair and substantial relationship between purpose of ordinance and its application in this instance. The purpose of the setback requirements is to allow for adequate light, air, and access for the property. The structures on the adjacent property are far removed from the proposed improvements and are separated by a heavily wooded area.

5. *Substantial justice is done:*

It is substantially just to allow the property owners the reasonable use of their property. The proposed improvements will greatly improve the desirability of the property for the Applicants and would not be visible from the public right of way. The affected side yard abutter has submitted a letter in support of the relief requested. There are no abutting structures within any reasonable vicinity that would be affected by the setback incursion as proposed. There is no benefit to the public in denying the variance that is not outweighed by the hardship upon the owners.

Mr. Colwell explained that the plunge pool would be five feet deep and use heated salt water. The pool would be made of precast concrete. The pool must be elevated up to ensure adequate drainage underneath. There is a five foot drop where the terraced space would utilize the existing ledge for the plunge pool. Chair Baker asked if other areas on the lot were considered for the plunge pool and sauna. Mr. Colwell responded that the area in the back of the house is not suitable because of the depth and level of the groundwater. In addition, there is the 250 foot setback from the ocean front, which is also where the old leach field was. The north side of the home has a fresh waterway that needs to have a vegetated buffer, and is also within the 50 foot setback. Mr. Colwell pointed out that the north side has very poor drainage.

Mr. Fitzpatrick asked how far back the abutting house is from the property line. Attorney Bosen responded that it is quite far back. Mr. Fitzpatrick asked if any other approvals would be needed. Mr. Colwell stated that the Applicants only need zoning relief. Ms. Sofio asked if the Applicants had any concerns about the new FEMA flood maps, which show much of Wild Rose Lane under water in the future. Mr. Colwell responded that this is partly what drove the selected location instead of an alternate one. Mr. Colwell also discussed how the impervious coverage of the lot will be decreasing from 18.1% to 14% by converting some walkways to pervious pavers and adding a rain garden for drainage features.

Chair Baker opened the public hearing at 7:22 p.m. Chair Baker read a letter in support of the application from William Hartwig, manager of DNH Estates, LLC at 149 Wild Rose Lane.

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.

Mr. Lannon felt that the proposal is well thought out in terms of drainage on site and visibility of the proposed additions. He acknowledged that the proposed structures are not necessities, but they are important to the property owners. He also acknowledged that the lot has some constraints, such as its odd shape, which limits where the plunge pool and sauna could be placed. Overall, Mr. Lannon was in favor of granting the variance.

Ms. Sofio agreed and appreciated the care taken to cut down on the impervious areas and offset them. Mr. Gardner also found the application to be thoughtful. He appreciated how the Applicants have been conscientious, such as by taking the outdated septic system and moving it to a better spot. Mr. Fitzpatrick agreed with others' comments and was in favor of the request. Chair Baker felt that this is a good way for the Applicants to enjoy their property without causing harm. He stated that all criteria have been met.

Mr. Lannon motioned to approve the application of Porthaw Trust, owner of 129 Wild Rose Lane (Tax Map 3, Lot 1) for a variance from Article 4, Section 4.2.1 Table 1, Row C in order to allow construction of a plunge pool, stone wall, and sauna within the 20 foot rear setback, having met the five criteria for zoning relief. Mr. Gardner seconded. Motion carried unanimously by a vote of five to zero.

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

Mr. Fitzpatrick moved to accept the September 2021 minutes as amended. Mr. Lannon 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, December 21, 2021 at 7:00 p.m. at the Commons.

### **5. Adjournment.**

There being no further business, Mr. Gardner moved to adjourn the public meeting. Ms. Sofio seconded. The motion carried, unanimously, and the meeting adjourned at 7:30 p.m.

Respectfully Submitted,

Meghan Rumph  
*Secretary*