

APPROVED

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**MINUTES OF THE NEW CASTLE ZONING BOARD OF ADJUSTMENT
Tuesday, October 18th, 2022 – 7:00 p.m. (Town Hall)**

Members Present: Todd Baker, Chair; John Fitzpatrick; Ben Lannon; Alyson Tanguay.

Members Absent: Mark Gardner; Rebecca Goldberg; Margaret Sofio; Matt Taylor.

Others Present: Jim Cerny; William Lomas; Jerry Marvin; Chris Mulligan, Bosen & Associates PLLC.

Chair Baker called the meeting to order at 7:04 p.m. Voting members of the Board are Chair Baker, Mr. Fitzpatrick, Mr. Lannon, and Ms. Tanguay.

1. Case 2022-05. William A. Lomas, owner of 54 Portsmouth Ave., Map 11, Lot 37, has requested a variance for relief from New Castle Zoning Ordinance Article 4.2 Section 3 to allow side setback relief of 8.2 feet where 15 feet is required, and rear setback of 0.2 feet where 15 feet is required. Lot coverage existing is 38.9%, and is asking for 41.3% where 20% is allowed per the ordinance.

Chair Baker reminded the Applicants that three votes in favor are required for the application to pass. The Applicants have agreed to proceed with the four Board members present. Attorney Chris Mulligan presented on behalf of Bill Lomas. The existing site is significantly nonconforming in terms of setbacks and coverage. Nearly the entire existing structure encroaches within the 100 foot wetland setback. The house is a split level ranch that dates back to the 1950s and is in need of renovations. The Applicants propose to remove the existing shed as well as all impervious pavement within the 100 foot buffer. They would like to erect a new, two story garage in front of the house. The existing carport will be converted to a screened-in porch. The pavement in the back of the house would be removed and replaced with a narrow deck that would run along the rear of the house. There will be about half as much impervious pavement as there currently is, with one of the driveway entrances to be removed. The plan also calls for a four foot bump out and a farmer's porch in the front of the house.

The current lot coverage is at 38.9%, and when the second phase of the project is completed, the lot coverage will drop to 37.6%, where 20% is allowed. Chair Baker noted that at the end of phase one, the lot coverage will be 41.3%. Mr. Lomas is also requesting variances for a rear yard setback of 0.2 feet where 7.7 feet exists and 15 feet is required, and for the side yard setback of 8.2 feet for the deck and farmer's porch, where 8.1 feet exists and 15 feet is required.

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 proposal will not threaten the health, safety, or welfare of the public. The residential use will not change, as it will remain a single family residence. The improvements to the property, such

as the elimination of one of the driveways and a fair amount of impervious pavement, will enhance the health, safety, and welfare of the public.

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

The proposal is a substantial upgrade and modernization of this property and those surrounding it. The home will be much more aesthetically pleasing, particularly by eliminating half of the paved surface on the property.

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

This is a nonconforming lot and structure on a relatively small site, burdened by the wetlands buffer that takes up almost the entire built environment on the site as it currently exists. There is a drainage easement that runs along the side of the property to the rear. The proposed use is reasonable, as it is a residential use in a residential zone. There is no fair and substantial relationship between the purpose of the coverage and setback requirements and their application to this property.

5. *Substantial justice is done:*

There is no benefit to the public if requiring the strict compliance with the zoning ordinances in this case. The existing home is noncompliant with the side and rear setbacks, which cannot be changed. Any improvements to the property will require some type of zoning relief. The Applicants seek to make the property more conforming with the lot coverage and the removal of pavement within the 100 foot setback. Where the rear property line abuts the proposed deck is wetlands that is unbuildable and has no active use by its property owner. The purpose of the setbacks is to ensure sufficient light, air, and emergency access, and to avoid overcrowding and conflicting uses. In this case, there would be no conflict because there is no effective use of that area where the encroachment is proposed. Denying the proposed deck in the rear of the property would be no benefit to the public and would be a loss to the applicant.

Ms. Tanguay asked about the phasing shown on the site plan, particularly how the pavement coverage will change between phases. Attorney Mulligan explained that some of the existing pavement will remain during the construction of the bump out and farmer's porch. Then, once that is constructed, they will be able to remove more of the driveway pavement. At the end of the project, the driveway will be much shorter. Chair Baker asked if the Applicants have a drawing of the proposed garage. Mr. Lomas responded that he does not currently have this.

Mr. Lannon asked whether the building permits are intended to cover all phases of the project or just the first phase. Attorney Mulligan responded that they intend to do the entire project all in the same building permit, but if it expires, they will need to request an extension. Mr. Lomas stated that the goal is to have all phases of the project complete in two years. Attorney Mulligan noted that variances are valid for two years from when they are granted. He added that the Applicants will need a conditional use permit from the Planning Board. They have received a recommendation of approval from the Conservation Commission, provided they supply details of

the water drainage, landscape plan, and deck. The proposed covered porch where the carport currently exists will not be considered pervious because it has a roof over it.

Ms. Tanguay stated that she would like to hear the Planning Board and Conservation Commission comments on the plans, particularly once they have more detailed plans for the deck, for example. Mr. Fitzpatrick expressed concern that the calculations may not be correct if the deck surface is not considered in the lot coverage. Attorney Mulligan noted that Ray Bisson of Stonewall Surveying considered the deck in his calculations of the impervious surface coverage.

Chair Baker opened the public hearing at 7:32 p.m. Jim Cerny, 44 Portsmouth Avenue, is an immediate abutter. He spoke in favor of the proposed changes, noting that six houses have been teardowns in the neighborhood since 2004. He has not witnessed any ponding in the wetland, and felt that there will be no material changes in water runoff with the proposal. The water runoff that goes into the wetlands now is from Portsmouth Avenue.

Jerry Marvin, 56 Oliver Street, asked if the deck off the back of the house would be covered. Mr. Lomas responded that it will not be covered. Mr. Marvin also noted that he does not see ponding or buildup of water in the wetland, so drainage does not appear to be an issue right now. He believed the project seemed like it will be a big improvement to the site and will better match the character of the neighborhood.

Hearing no further comments from the public, Chair Baker closed the public hearing at 7:37 p.m. and opened discussion back up to the Board.

Ms. Tanguay felt that in principle, the idea that the lot coverage is not worsening makes more sense than approving the 41.3% coverage that would be at the end of phase one of the project. She appreciated the desire to transform the carport into a useable covered porch. Ms. Tanguay was struggling with the lack of input from the Planning Board, and not having total clarity on the phasing of the project and how it would unfold. She also struggled with the pervious deck in the back of the house. In her experience as an architect, it is hard to convince any board that a deck can be pervious. In addition, some of the deck would be within the 50 foot setback. Ms. Tanguay wondered if instead of a deck, the Applicants could have a pervious patio at grade. She suggested taking advantage of the view of the Piscataqua River in the proposed porch. Chair Baker clarified that the deck is included in the 37.6% impervious surface area calculated at the end of phase two.

Mr. Fitzpatrick was also wondering whether the deck was included in the impervious surface calculation. He found the proposal to be tasteful, though he did not love the idea of pushing the structure right up against the rear setback. He did agree with Attorney Mulligan's point that there is nothing really in the back that would interfere with the light, air, access, etc. On balance, given the lack of objection from any abutters, Mr. Fitzpatrick was inclined to grant the application.

Mr. Lannon stated that he was more hung up on the proposed garage, as that would be a major change to the appearance of the property, and he wondered how the water runoff would be handled with this addition. He would like to see a drawing of the proposed garage given that it is

a fairly substantial addition to the yard. Mr. Lannon acknowledged that the abutters did not have any objections.

Chair Baker stated that part of the ZBA approval would include conditions that approvals from the Planning Board and all other applicable boards are received. He went through the five criteria for zoning relief and found that all five criteria have been met. He noted that the neighbors appeared to be in favor of the proposal as well.

Ms. Tanguay did not see the need to have the deck be as large as proposed, and stated that if it was modified and made smaller, she would be in favor of approving the application. She felt that it was not impossible to make the deck smaller. Attorney Mulligan reminded that the test is not whether it is physically possible to comply, rather it is an unnecessary hardship. He pointed out that the rear setback is almost entirely wetland.

Mr. Fitzpatrick motioned to approve the application of William A. Lomas, 54 Portsmouth Avenue, Map 11, Lot 37, as submitted, having met the five criteria for zoning relief for a variance from Article 4.2 Section 3, provided that all necessary Planning Board and environmental approvals are obtained prior to commencement of the project. Mr. Lannon seconded. Motion carried by a vote of three to one, with Ms. Tanguay not in favor of the application.

2. Approve Minutes.

Mr. Lannon moved to accept the August 2022 minutes as written. Mr. Fitzpatrick 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 29, 2022 at 7:00 p.m. at the Town Hall.

4. Adjournment.

There being no further business, Chair Baker moved to adjourn the public meeting. Mr. Fitzpatrick seconded. The motion carried, unanimously, and the meeting adjourned at 8:00 p.m.

Respectfully Submitted,

Meghan Rumph
Secretary