

MINUTES OF THE NEW CASTLE ZONING BOARD OF ADJUSTMENT
Tuesday, May 23rd, 2023 – 7:00 p.m. (Town Hall)

Members Present: Todd Baker, Chair; John Fitzpatrick; Mark Gardner; Rebecca Goldberg; Rich Landry; Ben Lannon.

Members Absent: Alyson Tanguay; Matt Taylor.

Others Present: Rejean Audet; Kevin Callahan; Michael Cerbone, Mangel DeStefano Architects; Jim Cerny; Scott Dylla; Jane Finn; Terri Golter; Alan Hilliard, John Maniscalco Architecture; Monica Kieser, Hoefle, Phoenix, Gormley & Roberts, P.A.; John Maniscalco, John Maniscalco Architecture; Iain Moodie; Mark Pelletier, Mangel DeStefano Architects; Michel Phaneuf; Timothy Phoenix, Hoefle, Phoenix, Gormley & Roberts, P.A.; Chris Ragusa, CM Ragusa Co., Inc.; Eric Weinrieb, Altus Engineering, Inc.

Chair Baker called the meeting to order at 7:04 p.m. Voting members of the Board are Mr. Fitzpatrick, Ms. Goldberg, Mr. Lannon, Mr. Landry, and Chair Baker. Mr. Gardner is an alternate.

1. Case 2023-03. Iain Moodie, owner of 62 Portsmouth Avenue, Map 16, Lot 46, has requested a hearing for an Appeal of Administrative Decision for the Historic District Commission approval of the April 6, 2023 application for 34 Oliver Street.

Iain Moodie, 62 Portsmouth Avenue, presented his appeal of the Historic District Commission (HDC) decision to approve the application of Ronald and Mary Pressman, 34 Oliver Street, for new construction on the “front” lot. Mr. Moodie outlined the three reasons for his appeal. First, he contends that the building area information in the application was misrepresented by the applicant and architect on the project. He noted that he and several others in town have concerns about the massing and scale of the proposed home, and felt that the plans were vague and misleading. Mr. Moodie calculated the approximate build area to be roughly 6,200 square feet, where 5,563 square feet is allowed. He claimed that when he pressed for answers about the approximate build area, he was met with confusion from the HDC and apparent ignorance from the architect, though he noted that the architect eventually stated that the application met all zoning ordinances.

Second, Mr. Moodie objected to the HDC Chairperson’s statement that the viewshed from Portsmouth Avenue could not be discussed because Portsmouth Avenue is not in the Historic District. Mr. Moodie cited 9.3.5 of the New Castle Zoning Ordinance, which states that a Certificate of Approval is needed from the HDC for any improvements which lie “within the New Castle Historic District and [are] visible from *any* street” (emphasis added). He argued that the ordinance is clear that the viewshed from ANY street, including ones not in the Historic District such as Portsmouth Avenue, should be included in the HDC’s analysis of the application. By neglecting to consider the views from Portsmouth Avenue, the HDC blocked certain criteria from the hearing that are relevant and could potentially alter the outcome of the application. Mr. Moodie pointed out that the lot has 87 feet of frontage on Portsmouth Avenue. He stated that the viewshed of the rear property and Portsmouth Avenue should be considered, and that the

viewshed from Oliver Street, which was considered, is the least objectionable since it is the front lot.

Third, Mr. Moodie objected to the listing of reasons for the approval in the HDC meeting minutes of April 6, 2023. He felt that only restrictions or reasons for denial need to be listed as statements of fact, and it was erroneous to list findings of fact in the approval.

Mr. Moodie explained that he is defending the Town Ordinances and Master Plan. He felt that the Pressmans' application was extremely misleading and that the plans were insufficient to go before the HDC. Mr. Moodie felt that there was no clear way for the HDC to address the question of the mass of the proposed building, as the architect refused to answer questions about the mass. Mr. Moodie believed that the mass of the building should have been discerned during the HDC's workshops, otherwise the HDC does not have the information needed to make a decision on the application. He was concerned that the building will be massing onto the adjacent property. Chair Baker confirmed that no building permit has been issued for either of the subdivided lots at this point. Mr. Moodie had requested from the Select Board that Town Counsel be present at this evening's ZBA meeting. Chair Baker responded that Town Counsel advised that the ZBA should hear the reasons for Mr. Moodie's appeal. He clarified that the application was previously heard at the HDC and was unanimously approved. If the ultimate plan that goes before the Town Building Inspector is materially different, the applicants would need to go back before the HDC to obtain new approval.

Mr. Moodie summarized that he would like the ZBA to weigh in on 1) the HDC excluding viewsheds from Portsmouth Avenue, and 2) the misinformation on the massing and crowding of the proposed house size. He concluded that he would like the case to be sent back to the HDC to have the full information considered. Mr. Moodie would also like the proposed house to be moved further from the lot line to give neighboring houses some space and light.

Chair Baker opened the hearing to the public at 7:28 p.m. Attorney Tim Phoenix spoke on behalf of Ron and Mary Pressman, who could not attend the meeting. Also present were Mike Cerbone and Mark Pelletier of Mangel DeStefano Architects. Chair Baker and Mr. Gardner disclosed that they have both worked with Attorney Phoenix in the past, but this will have no impact on their hearing of this case. Attorney Phoenix cited Section 9.3.7.4.a.1 of the New Castle Zoning Ordinance, which states that if the opinion of a majority of the HDC members agree that the application meets the purposes of the Article, then the Commission shall issue a Certificate of Approval. Attorney Phoenix felt that Mr. Moodie simply disagrees with the HDC decision and does not offer any valid points of error with the decision that would warrant a re-hearing of the application.

Attorney Phoenix contended that Mr. Moodie's discussion of the building area requirements is misplaced, and that building area calculations fall outside of the purview of the HDC and its analysis of scale. According to Attorney Phoenix, the HDC appropriately did not consider the maximum building area and instead properly focused on the proportionate scale of the proposed home in relation to others in the area and in the Historic District. He stated that the HDC reasonably and lawfully determined that the scale and size of the proposed structure was consistent in relation to other nearby developed lots and respected architectural traditions, as per Section 9.3.1 of the Zoning Ordinance. Attorney Phoenix cited specific comments made by HDC

members regarding the compatibility of the Pressmans' proposed home in relation to other larger homes in the neighborhood.

Per the New Castle Zoning Ordinance, building area is defined as "the gross floor area of all buildings on a lot including garages, detached buildings and covered porches and including 50% of the area of walkout basements, but excluding patios and decks. Storage sheds of less than 80 square feet are also excluded." Gross floor area is defined as "the sum of the areas of the several floors of the buildings as measured by the exterior faces of the walls, but excluding the areas of fire escapes, unroofed porches or terraces, and areas such as basements and attics exclusively devoted to uses accessory to the operation of the building." Attorney Phoenix noted that he and the Pressmans' team of engineers and architects met with Building Inspector Russ Bookholz, who confirmed that the project complies with the Zoning Ordinances. Mark Pelletier of Mangel DeStefano Architects added that he went through the building area calculations with Mr. Bookholz, and they both believe the application meets the gross floor area requirements. He clarified that the building area is 5,477 square feet, which does not include the attic, while the finished area is lower. The allowable building area is 5,565 square feet. Attorney Phoenix clarified that Mr. Bookholz did not say that he would not consider massing at all, rather, he had wanted the HDC to review the application and provide their feedback first.

Attorney Phoenix agreed with Mr. Moodie's statement that the Zoning Ordinance does not preclude views from other streets that are not in the Historic District. However, he felt that the view from Portsmouth Avenue east of the Oliver Street intersection is hardly visible due to an existing retaining wall, other homes, and vegetation, and therefore this viewshed does not have any real relevance. The primary view of the project is from Oliver Street with secondary views from Portsmouth Avenue looking down Oliver Street toward the Piscataqua River. Attorney Phoenix stated that the HDC does not regulate viewsheds from any particular lot, such as Mr. Moodie's. Rather, they regulate views from any street. He added that when standing on Portsmouth Avenue in front of Mr. Moodie's home, there is no view of the project due to his home and the retaining wall along Portsmouth Avenue west of his home. Because there is no view from this area of Portsmouth Avenue, the HDC did not err discounting this.

Attorney Phoenix noted that Mr. Moodie's claim about the format of the HDC's Notice of Decision is without merit and must be dismissed. The Ordinance does not require that a Notice of Decision include reasons for approving a project, but it also does not prohibit the inclusion of factual findings which support the HDC's decision.

Attorney Monica Kieser was also present on behalf of the Pressmans. She stated that the HDC held multiple work sessions and a site walk, and members are very familiar with the area of the proposed project. Elevations from all sides were examined and considered before the HDC. Because the HDC is not opining on the overall zoning compliance of the project, there is no bar to them listing what they relied upon to make their decision, and in fact, it is appropriate to list the Commission's reasons for approval, according to Attorney Kieser. Mr. Pelletier added that during the site walk with the HDC, the proposed house size was staked out so members could get a sense of the size of the house on the lot. He highlighted that two public hearings were held and the HDC unanimously approved the application.

Kevin Callahan, 26 Oliver Street, noted that Mr. Moodie is not just speaking for himself. Mr. Callahan stated that he previously asked the architect on the project about the massing of the house, and the architect indicated that the house would be about 3,400 square feet. Further, Mr. Callahan shared that he was only shown elevations and not street views from Portsmouth Avenue. He has not been provided ridgelines, and while he eventually was able to obtain some measuring, it is a very limited view in his opinion. Mr. Callahan felt that his conversations with the architect and landscape architect were evasive at best, and he feels that his input has been truncated based on the lack of facts and transparency. His biggest concern is that the abutters understood the building would be a certain mass and now it is much bigger.

Jim Cerny, 34 Portsmouth Avenue, shared that he went to the three HDC meetings for the Pressmans' application and also attended the site walk. He counted 13 abutters to the Pressmans, at least two of whom have very large lots. Mr. Cerny did not feel that there is much of a view of the front lot in question from Portsmouth Avenue. He felt that the issues of massing and viewsheds have been discussed at the HDC meetings already. Mr. Cerny added that the Chair of the HDC has 20 years of experience, and the Vice-Chair has served in that position since 2013. Both the Chair and Vice-Chair have submitted their resignation from the HDC, with both citing cumulative frustration with the general process and how it has become increasingly contentious in a way that they are not comfortable with.

Mr. Moodie stated that he understood that the Boards are comprised of all volunteers, and it is difficult for a layperson to understand the scale of a house based solely on a picture. He wanted to highlight the lack of knowledge and experience of HDC members in terms of the building area calculations. Build area is the mass calculation in the New Castle Zoning Ordinance, according to Mr. Moodie. He felt that the Building Inspector's denial letter and construction documents with clear building calculations must be in-hand at any meetings before Boards such as the HDC. Mr. Fitzpatrick pointed out that based on the HDC meeting minutes, members did consider massing of other houses. Mr. Moodie responded that Commission members did not have any metric and could not accurately judge the mass of the building. He stated that attics must be included in the building area calculations, and historically this has been the practice of previous Building Inspectors. He also wanted the area of the barn included in the building area, rather than only including livable area. Mr. Moodie felt that the HDC did not act as professionally as they should have, and they need to rehear this case and be well aware of the issues at hand. Chair Baker encouraged Mr. Moodie to reach out to the Select Board with his concerns about what he felt was the Building Inspector's arbitrary reading of the Zoning Ordinance.

Attorney Kieser expressed concern about repeated representations that the architect was not forthcoming with information. She acknowledged that the calculations are complicated, and emphasized that the project is zoning compliant and requires no variances at this time for maximum building area or height. These aspects of the project were discussed at previous HDC meetings, and representations about how big the house will be and the livable area were provided and remain accurate. Further, the HDC looks at the mass and scale of structures, and not the maximum building area. Mass and scale are what one looks at from the streetscape; they are not necessarily specific calculations. Applicants are not required to submit a full construction set of drawings to the HDC. The HDC discusses visual presentations. Attorney Kieser felt that Mr. Moodie's main concerns are really for the back lot, though she acknowledged that the HDC should not have stated that they could not consider views from Portsmouth Avenue. Nonetheless,

this is a moot point because the house is not visible from Portsmouth Avenue, according to Attorney Kieser. She pointed out that per the Zoning Ordinance, gross floor area specifically excludes attics and certain areas that are used for accessory purposes. If an applicant is increasing the maximum building area, the individual needs to get a variance to do so. Therefore, if someone will be renovating an attic to make it livable, that person would need to obtain a building permit and go through the appropriate procedures if variances are needed.

Rejean Audet, 31 Oliver Street, lives directly across the street from the Pressmans and stated that the home will be visible from Portsmouth Avenue once it is built.

Hearing no further comments, Chair Baker closed the public hearing at 8:14 p.m. and opened discussion back up to the Board. Ms. Goldberg felt that people will have different calculations for mass, and these calculations are often manipulated. Based on the Zoning Ordinance as it is written, she did not feel that the HDC erred in that respect. Ms. Goldberg did agree that the HDC erred in not hearing evidence related to the viewshed from Portsmouth Avenue.

Mr. Landry pointed out that there seemed to be confusing information going around, but the building area definition is written the way it is in the Zoning Ordinance in order to give a better idea of the actual mass of the entire structure. He did find it to be a clear error that the HDC Chair stated that the viewshed from Portsmouth Avenue could not be included. While Mr. Landry was unsure if this would change the voting of the HDC, he felt that the case should be remanded for that reason to make a clean decision.

Mr. Fitzpatrick felt that the building area discussions are a red herring and do not have anything to do with the HDC. The HDC minutes show that the members considered the building size, height and mass. He did believe that the HDC should have considered the streetscape from Portsmouth Avenue, though he was not sure if it would make a difference in how members voted. Mr. Fitzpatrick concluded that the case should be remanded to the HDC so that Mr. Moodie has an opportunity to address this specific topic only, and that the HDC should not have to re-hear all arguments.

Mr. Gardner shared that he has a lot of respect for Chair Rowland of the HDC. The minutes make it clear that the HDC felt that the building would fit with the character of the neighborhood. He sympathized with concerns about massing and noted that this is a concern throughout New Castle. Ultimately, Mr. Gardner felt that the exclusion of Portsmouth Avenue viewsheds was a harmless error on the part of the HDC and would not make a difference in the Commission's decision, so the case should not be remanded.

Mr. Lannon believed that the HDC did include views from certain parts of Portsmouth Avenue in their consideration of the project, and did not believe that the case should be remanded.

Chair Baker stated that the first portion of Mr. Moodie's appeal regarding building area is not an issue for the HDC, but rather something that needs to be addressed with the Building Inspector, who reports to the Select Board. Chair Baker felt that it was clear that the HDC should have considered improvements visible from any street, including Portsmouth Avenue. He concluded that the case should be remanded back to the HDC to have the viewshed from *any* streets considered, as it may or may not be a harmless error.

Chair Baker motioned to remand the application of Mary and Ron Pressman, 34 Oliver Street, Tax Map 16, Lot 40, to the Historic District Commission for the Commission to consider the improvements from *any* visible street. Mr. Fitzpatrick seconded. Motion carried by a vote of four to one, with Mr. Lannon opposed.

2. Case 2023-04. Attorneys R. Timothy Phoenix and Monica F. Kieser, of Hoefle, Phoenix, Gormley & Roberts, PLLC, for Applicants Scott and Melodie Dylla, owners of 149 Wild Rose Lane, Map 02, Lot 02, Sub A, for relief from the following New Castle Zoning Sections: Article 4, Table 1, Row F, Max Building Height to construct portions of a roof that exceed the 32 feet allowed.

Attorney Tim Phoenix presented on behalf of Applicants Scott and Melodie Dylla. Also present were Mr. Dylla, architect John Maniscalco, project designer Alan Hilliard, engineer Eric Weinrieb, and general contractor Chris Ragusa. Attorney Phoenix stated that the Dyllas previously received approval from the ZBA in September 2021 for redevelopment of the lot, which involved a garage mostly below grade with a landscaped roof. The plan was designed to have the home emerge from the surrounding land by utilizing terraced landscaping, which meant that the garage would be placed at the lowest possible grade point. After receiving all necessary approvals and permits, work commenced at the property. Upon excavating the area where the garage will be placed, it was discovered that the groundwater level was higher than originally anticipated. Attorney Phoenix explained how the engineers had made the best estimate they could at the time, though they could not get a true idea of what was below the ledge. It was only when the ledge was excavated that the team discovered how more water was entering the site than previously anticipated.

The Dyllas consulted with a geotechnical engineer, who recommended raising the building elevation of the southerly portion of the home by two feet to avoid future issues with water infiltration at the subgrade level. The two foot increase consists of 1.5 feet for the basement level increase, and six inches for the turf roof above the garage in order to accommodate the larger beams that are needed. The northerly portion of the home only needs to be raised six inches, which does not require relief and will minimize any changes seen by the closest abutter.

Attorney Phoenix reiterated the benefits of the project, such as the environmentally superior geothermal heating and cooling system and roof-mounted photo-voltaic solar array to minimize external electrical consumption. Also, any work done on the previous house would have to comply with FEMA regulations, which would lift the house even higher than the new proposed height.

Mr. Maniscalco explained how the effect of the increased height being requested is mitigated by the peaked/gabled roof form. The vast majority of the home will be well below the height limit. Even with the proposed two foot increase in height, the home will still be 1.6 feet lower than the average height of the previous home. The pitch of the roof cannot be reduced any further without altering the desired three to one design. The peak dimensions and proportions are not affected by the latest proposal. Mr. Maniscalco presented visual renderings showing how the perceivable difference in height is negligible from any public viewpoint.

Chair Baker asked about the initial test pits that were done on the site. Mr. Weinrieb explained that they had dug test pits for the septic system, but these did not get too far into the area that has now been excavated for the garage. The engineers used the best information they had at the time, and even if they had done geotechnical borings in the ground, they would not get an appreciation of the true volume of water. The project will still require water to be pumped, so there will be a trench drain coming down the driveway with a second trench drain before the garage area.

Mr. Weinrieb noted that although it is a large parcel, there are site constraints with the various flood plains, as well as tidal areas constraining the building envelope. The team has been working to preserve the mature vegetation on the site. Mr. Weinrieb stated that the Dyllas already have wetland, shoreland and alteration of terrain permits, as well as two permits for the advanced treatment septic system.

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 redevelopment project retains all of the environmental benefits of the previous proposal, including reduction of paved driveway, restoration of grass and wildflower meadow, and retention of most of the existing trees. The guest house and main house will be moved outside of the flood zone. The project also entails removing an antiquated septic system that was close to the water and replacing it with two new state-of-the-art septic systems outside of the flood zone and wetland buffer. The variance will further protect the environment by requiring less pumping and reducing the flooding in the area. Attorney Phoenix commented on how there has been a lot of discussion in town about the appearance of the proposed home, but this is not what is before the ZBA. The new home design and terraced landscaping will result in a less bulky and more open effect. Granting this slight height variance to prevent subgrade infiltration of water neither alters the essential character of the locality nor threatens the public health, safety, and welfare.

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

The proposal will in no way diminish the value of surrounding properties. The house will sit 280 feet away from Wild Rose Lane, so any change in height from what was previously approved would not be noticed.

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

Special conditions exist that distinguish the Dyllas' property from others in the area. Specifically, the shoreland/wetland buffers and flood zones reduce the building envelope. Given the existing grade and groundwater, any home that would go on this lot would require similar relief. There is no fair and substantial relationship between the general public purposes of the ordinance and its specific application in this instance. The proposed design is less bulky and imposing than the previous home, and will be 1.6 feet lower than the ridge height of the previous home. The proposed use as a single-family residence with accessory dwelling unit is permitted and therefore reasonable.

5. *Substantial justice is done:*

There is no benefit to the public that would outweigh the hardship to the applicant in this instance. The Dyllas are constitutionally entitled to the use of their lot as they see fit. The increase in height being requested is very minimal and will not be noticed given the distance between the house and the public road. No legitimate public purpose would be gained by denying the variance, and denial would result in an unconstitutional taking.

Chair Baker opened the public hearing at 9:10 p.m. Terri Golter, 17 Locke Road, spoke on behalf of Vivian and Caitlin Campbell, who reside at 129 Wild Rose Lane and could not be present at tonight's meeting. Ms. Golter is a 38 year real estate veteran and was also the listing agent of the home that the Campbells purchased. She read a letter submitted from Vivian Campbell. In his letter, he shared that the Dyllas' guesthouse has taken away his water view from his studio. Mr. Campbell felt that the guesthouse is imposing and sits right on the shared property line. He noted that the snow and ice stay much longer on their driveway in the winter due to the sunlight that is now being blocked by the guesthouse. Mr. Campbell and his wife state that the construction of the Dyllas' new home 2.7 feet above the 32 foot limit allowed by the Zoning Ordinances will further diminish their ocean views and property value. Given how the guesthouse has already diminished their enjoyment of their property, they are not in support of this variance request.

Ms. Golter stated that at the time of the September 2021 ZBA meeting, she had asked about the size of the guest house and was told that it would be one story above grade. She contended that the Campbells were never consulted about the final plans for the guest house and how it would impact them. Ms. Golter noted that the different peaks of the proposed roof of the main house will impact the Campbells, and their views from the second story of their garage and house will be diminished with the proposal.

Mrs. Campbell's mother, Michel Phaneuf of Hudson, NH, spoke as well. She stated that the original house was set further back and closer to water than the new guest house. The Campbells have had their cellar flooded in the past, but did not choose to tear down their house. Ms. Phaneuf felt that the Dyllas' plans should not impact others' views.

Mr. Dylla stated that he personally met with the Campbells with the new set of plans, though it happened to be the day that the Campbells were leaving. He reminded everyone that the meeting tonight is about the house and not the guest house, which required no variances. Mr. Dylla continued that he has been communicating with the Campbells throughout the whole process. There is no change of footprint to the proposed house, which is not being moved. Ms. Goldberg asked what the plan would be if the requested variance is not granted. Mr. Dylla responded that the project would require significantly more engineering and would increase the risk of flooding.

Chair Baker read letters received in support of the variance request. The letters were from Dwayne and Christine Baharozian, 136 Wild Rose Lane and Spence and Caroline Lockhart, 174 Wild Rose Lane. John Morris, 120-B Wild Rose Lane, and Ed Glassmeyer, 166 Wild Rose Lane, also emailed their support of the request.

Attorney Phoenix stated that the Dyllas have been forthcoming and provided information to neighbors every step of the way. The Dyllas have supported the Campbells' variance requests in the past, and are trying to be good neighbors. Furthermore, the Dyllas' guest house required a

conditional use permit for an accessory dwelling unit, and plans were provided to all abutters around December 2021. Attorney Phoenix felt that the Campbells are upset about the carriage house location and are relaying that to the height variance being requested now. He presented the previous letter that the Campbells had submitted in September 2021 in which they supported the Dyllas' variance request and commented that the overall profile of the new house would be "much less imposing than the house currently present on the site". In that letter, the Campbells also stated that the "vast majority of the new home will be less than the 32 foot limit and open better views to the ocean" than what they had. Attorney Phoenix submitted that the new height being requested will not change the Campbells' views. He also showed a picture taken at ground level the day of this meeting, which shows that the Campbells cannot see the ocean anyways, even without the new home being constructed. Attorney Phoenix pointed out that the Campbells themselves have acknowledged that their own construction diminished some of their water views. He disagreed with Ms. Golter and said that she has provided no support that the new increase would diminish the Campbells' property values.

Attorney Phoenix highlighted key words such as "minimally, if at all" and "no appreciable impact" that Ms. Golter used in her commentary of the impact of the proposed two foot height increase on the Campbells' property values. He noted that you do not need an expert to counter another expert's testimony. In Attorney Phoenix's experience, when a realtor or appraiser is involved, the individual would give an example to compare to and prove his/her point when arguing that a property value would be diminished. Ms. Golter commented that the Campbells are already losing water views from their second floor, and they do not want to lose any more views.

Jane Finn, 169 Portsmouth Avenue, asked about view rights and how that impacts the Board's analysis. Chair Baker responded that this can be relevant in terms of diminution of the value of surrounding properties. Ms. Phaneuf stated that the Campbells ultimately want peace, respect, and good neighbors.

Hearing no further comments from the public, Chair Baker closed the public hearing at 9:38 p.m. He stated that he would not be a voting member on this case and that Mr. Gardner will be voting. Mr. Lannon stated that even if the Applicants were asking for this variance at the beginning of the project, it would still have been approved because the overall result is less nonconforming. The impact of two feet in height is minimal and he was in support of the application. Mr. Gardner agreed and shared that as a walker-by, he felt that the request would not result in any perceivable changes.

Mr. Fitzpatrick found Ms. Golter's testimony to be important since she has decades of experience in real estate and is considered an expert in the field. He would like to see some sort of analysis showing that the property values of neighbors are not impacted, since Ms. Golter had previously stated that the surrounding property values would be diminished.

Mr. Landry stated that even with the increased height being requested, the house will still be less nonconforming than the previous structure. He felt that the view of the ocean will be better with the proposed home, and believed it would be a waste of the Applicant's time to request that the Applicant and the neighboring Campbells submit letters attesting to the impact on property values. Mr. Landry concluded that all five criteria have been met.

Ms. Goldberg noted that she was the dissenting vote in the original application in which the variance was granted. She believed that the cat was already out of the bag, and you never know what you will find when dealing with water. She had a hard time imagining the impact of the proposed house on the neighbors' homes given how far away they are. Ms. Goldberg understood the issue of the guest house and called it unfortunate, but pointed out that this is not part of the application before the ZBA this evening. While she was inclined to grant the variance requested, she still did not find hardship in the application.

Chair Baker went through each criterion. He stated that the variance is not contrary to the public interest, and the spirit of the ordinance is observed. Denying the variance would not benefit the public more than it would benefit the Dyllas if the variance were granted. Substantial justice will be done by granting the variance. Chair Baker stated that if Ms. Golter is presenting as an expert to argue that property values would be diminished with the application, that needs to be given weight. He pointed out how Ms. Golter had said that the Campbells' new garage with the second floor has a very good view of where the house is going, and the second floor at the back of the house has a water view as well, though it is more minimal. However, with this specific request, Chair Baker found that there would be no appreciable impact to surrounding property values, though he believed that the overall project negatively impacts the Campbells' property values.

Mr. Gardner motioned to approve the application of Scott and Melodie Dylla, owners of 149 Wild Rose Lane, Map 02, Lot 02, Sub A, as submitted, having met the five criteria for zoning relief for a variance from Article 4, Table 1, Row F, Max Building Height as outlined in Attorney Tim Phoenix's memorandum. Mr. Lannon seconded. Motion carried by a vote of four to one, with Ms. Goldberg opposed.

3. Approve Minutes.

Mr. Lannon moved to accept the March 2023 minutes as written. Ms. Goldberg 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, June 20, 2023 at 7:00 p.m. at the Town Hall.

5. Adjournment.

There being no further business, Mr. Fitzpatrick moved to adjourn the public meeting. Ms. Goldberg seconded. The motion carried, unanimously, and the meeting adjourned at 10:00 p.m.

Respectfully Submitted,

Meghan Rumph
Secretary