

**MINUTES OF THE NEW CASTLE ZONING BOARD OF ADJUSTMENT****Tuesday, January 23<sup>rd</sup>, 2024 – 7:00 p.m. (Macomber Room)**

**Members Present:** Todd Baker, Chair; Mark Gardner; Rebecca Goldberg; Rich Landry; Ben Lannon; Alyson Tanguay.

**Members Absent:** John Fitzpatrick; Matt Taylor.

**Others Present:** Russ Bookholz, Town Building Inspector; Marcia Brown; Groves Dinning; Terri Golter; Lorne Jones; Andy Keturakis; Dylan Kimmel; Glenn Kisch; Kevin McCool; Doug Pinciario; Jeff Reilly; Steven Riker, Haley Ward, Inc.; David Severance; Robert Sullivan; Charlie Tarbell.

Chair Baker called the meeting to order at 7:02 p.m. Voting members of the Board are Chair Baker, Ben Lannon, Mark Gardner, Rich Landry, Alyson Tanguay and Rebecca Goldberg.

**1. Continuation of Case 2023-12. Applicant, Moores NH Realty Trust of 2015, Robert Jr. and Wendy A. Moores, Trustees, owner of 224 Wentworth Road (Tax Map 5, Lot 12), has requested the following variances in order to permit a 500 square foot garage on the lot:**

- **Article 4 Section 4.2.1. Table 1C – Side Yard setback of 5 feet proposed where 15 feet is required**
- **Article 4 Section 4.2.1. Table 1C – Rear Yard setback of 6 feet proposed where 15 feet is required**
- **Article 4 Section 4.2.1. Table 1H – Lot Coverage of 35.9% proposed where 20% is required**

Chair Baker stated that the Applicants' attorney has submitted a letter requesting to continue the hearing to next month's meeting. The Applicants have agreed to renotify all abutters.

Mr. Gardner motioned to continue the application of Moores NH Realty Trust of 2015, Robert Jr. and Wendy A. Moores, Trustees, owner of 224 Wentworth Road (Tax Map 5, Lot 12), to the February 20, 2024 meeting. Mr. Landry seconded. Motion carried unanimously.

**2. Case 2024-1. Applicant, Kittery Point Yacht Club, owner of 350 Portsmouth Avenue (Lot B, Tax Map 14, Lot 1), has requested variances from the following sections of the Zoning Ordinance in order to build a dock:**

- **Article 2 Section 2.3.4 Accessory Use or Structure**
- **Article 3 Section 3.1.1 Residential District (R-1)**
- **Article 4 Section 4.1.1 General**
- **Article 4.1.2 Permitted Uses**

Mr. Gardner recused himself as a member of the Kittery Point Yacht Club (KPYC). Attorney Robert Sullivan presented on behalf of the Kittery Point Yacht Club as a member of the club. Attorney Sullivan disclosed that he is a part-time attorney for the City of Portsmouth, but is here

1 this evening on a volunteer basis as a club member. He introduced other speakers this evening,  
2 and noted that David Severance, club treasurer, has been very instrumental in the acquisition of  
3 the land and preparing the presentation this evening. Steven Riker, certified wetland scientist  
4 from Haley Ward, Inc., formerly Ambit Engineering, Inc., is the technical source of information  
5 for the project. Marcia Brown is the attorney who put together the application this evening. The  
6 KPYC is requesting variances this evening, and in the alternative, would seek a special exception  
7 or administrative appeal at the next scheduled ZBA meeting. Attorney Sullivan explained that  
8 the variance requests are very straight forward and cover all relief necessary for the Club at this  
9 stage. If the Board grants the variances requested, there will be no need to move on to the other  
10 forms of relief.

11  
12 Chair Baker read the denial letter from Town Building Inspector Russ Bookholz. Mr. Bookholz's  
13 letter stated that the KPYC does not meet the requirement of a primary structure on the lot from  
14 which the dock would go, so they cannot have an accessory structure such as a dock.

15  
16 Attorney Sullivan provided an overview of the club. The Club is a nonprofit with 200 members  
17 and 34 individuals on waitlist. There is no plan to increase membership as a result of the  
18 proposed dock. The KPYC's mission is to provide affordable access to the water for the common  
19 person, including those who are not members of the club, such as through the sailing school and  
20 the high school sailing league that serves various area high schools. The low membership fee of  
21 \$400 per year reflects this mission. The primary use of the proposed dock will be for educational  
22 purposes and for the sailing school. The Club is very involved in the community, from allowing  
23 the New Castle Fire Department to use the Club facilities for access to the water to the many  
24 educational programs the Club conducts. The proposed dock will allow the Club to carry out the  
25 same functions more safely and efficiently, particularly with the sailing school students, who  
26 could be transported from the proposed dock to the floating docks in the Back Channel. Mr.  
27 Severance noted that the proposed dock would be much safer, as students currently use a power  
28 boat to cross the Piscataqua River and go under the bridge to the Back Channel. This brings  
29 many potential dangers given the strong currents in the river and the boat traffic. There is also  
30 currently no Town access to the water in the Back Channel.

31  
32 Ms. Tanguay asked how the land is currently used from which the proposed dock would go.  
33 Attorney Sullivan responded that it is not currently used and cannot be developed due to its size.  
34 The lot has a salt marsh and no structures other than picnic tables and a firepit.

35  
36 Mr. Riker spoke about the details of the proposed dock. The dock application has been submitted  
37 to NHDES and is currently under review. Marsh elder has been located on the site. Docking  
38 structures are dictated by DES rules, so there is little flexibility in the design. The dock consists  
39 of an access way and a fixed pier that must be a pile-supported structure, which leads to a float  
40 system. The "T" part of the float will always have water under it and is located at the deepest  
41 part of the channel. The float system will have approximately two feet of water under it at mean  
42 low tide. The structure will have four, 12 inch diameter wooden piles that are specifically  
43 designed for marine use. The bottom of the pier is well above the water elevation for projected  
44 sea level rise in the year 2100. The gangway is a prefabricated aluminum structure that rolls on  
45 the landing float.

1 The proposed dock is approximately the same size as the existing KPYC dock on the other side  
2 of Portsmouth Avenue. Mr. Severance stated that the existing dock that the Club owns is 100 feet  
3 long, where the proposed dock will be 112 feet long, or 125 feet total including the gangway. For  
4 comparison, he pointed out that the Portsmouth Yacht Club dock is 740 linear feet. Mr.  
5 Severance argued that there will be navigability around the dock, and the Harbormaster must  
6 approve the proposal as well.

7  
8 Ms. Goldberg asked about the impact of the proposed dock on the adjacent public parking at the  
9 NH Fish and Game lot. Mr. Riker said that the design allows for kayakers to go underneath the  
10 piles that support the pier at high water. The structure is prefabricated offsite and will be  
11 constructed from a barge at low tide. The piles are drilled with a vibratory hammer, and there is  
12 no noise associated with it. He estimated that it will take about one week to construct the dock.

13  
14 Mr. Severance detailed how the KPYC is a benefit to the public and does not make a profit. The  
15 interests of the Club and community are the same. He emphasized how the Club is extremely  
16 inviting, and they are trying to facilitate use of the Club for everyone in a safe manner. The dock  
17 will allow boats to be moored from it, which will decrease traffic going back and forth through  
18 the Channel. There is an existing use for the dock across the street on the other parcel owned by  
19 the KPYC. The parking will be on the existing lot, which he felt would be adequate. The lot from  
20 which the dock would originate does not meet the 50 foot DES setbacks, which limits the  
21 possible locations where the dock could be placed. The Club is doing the best it can to work  
22 within DES regulations while minimizing the visual impact to the rest of the community.

23  
24 Ms. Goldberg asked if the Club considered using the land without building a dock. Mr. Riker  
25 said that when the club originally bought the land, they wondered if they could build a structure  
26 on the land. However, this is not possible because there is no building envelope. Mr. Severance  
27 added that they want to limit the impact on the land itself. Ms. Goldberg also asked about a  
28 breakdown of the educational activities versus the member services the Club provides. Mr.  
29 Severance responded that the majority of the Club's income comes from the sailing school.

30  
31 Chair Baker asked how the KPYC will control people using the dock who are not members of  
32 the Club or sailing school students. Mr. Severance responded that the direct abutters are already  
33 allowed to use the Club facilities. The area is well monitored because of the police presence as  
34 well. Ms. Tanguay asked how the Club would ensure that kids can safely cross the street from  
35 the Club facilities to the proposed dock. Mr. Severance commented that the Club has had initial  
36 conversations with the New Castle Police Chief and Bill Stewart about this. It is complicated by  
37 the fact that the road is State owned.

38  
39 Mr. Bookholz spoke about the denial letter he had sent the Club in December 2023. Per the  
40 Town Zoning Ordinances, the lot cannot have an accessory structure without a primary structure  
41 on the property. The lot is unbuildable and there is no structure on it. The lot is in the R-1  
42 district, which has prohibited uses that include the proposed dock. He stated that he spoke with  
43 Town Counsel, who felt that the dock did not meet the guideline for an educational purpose  
44 because it would not be a public use. Mr. Bookholz said that he had no choice but to deny the  
45 permit due to zoning regulations. His main concern is about life safety, and he was very  
46 concerned about children running back and forth across Route 1B.

1 Attorney Brown commented that she would like to see a copy of the legal opinion of Town  
2 Counsel for due process. Chair Baker responded that there was no written legal opinion.  
3 Attorney Brown shared that she is an attorney well-versed in charity law, and the State Supreme  
4 Court has been very liberal in what a public benefit includes. She noted that case law is very  
5 flexible and the educational component of the proposed dock should be considered. She  
6 reiterated the concerns about the safety of the sailing school children, citing one incident in 2016  
7 in which a tanker came off its mooring and could have hit the children in the river, in addition to  
8 concerns about wakes from boat traffic. If there is concern about the educational purpose of the  
9 dock, Attorney Brown suggested putting conditions on the variance approval.

10  
11 Attorney Sullivan went through the five criteria for zoning relief:

12  
13 *1. The variance will not be contrary to the public interest;*

14 The project retains all of the environmental benefits, including reducing foot and water traffic  
15 from sensitive areas, and protecting the salt tolerant grasses and other protective species. The  
16 dock will protect the shoreline from erosion by moving boats that would normally be launched  
17 and retrieved from the shore to having them instead launch from the proposed dock. The Club  
18 has spent countless hours working to reduce the visual and environmental impacts of the  
19 proposed dock. The primary public benefit will be that the dock will support the KPYC and its  
20 partner charities and educational organizations by offering educational sailing opportunities. It is  
21 also a public benefit to have the dock where people can see the boats, as people travel from all  
22 over the state and beyond to this area for the seaside views. The construction of the dock is in the  
23 public interest and supports the permitted uses in Section 9.2.4 in that it is a recreational use. The  
24 dock will preserve the heritage and architecture of buildings and minimize high density  
25 development.

26  
27 *2. The spirit of the ordinance is observed:*

28 The dock is not contrary to the spirit of the ordinance because it will promote the health, safety,  
29 and general welfare of the community and is consistent with the intent of the Town Master Plan.  
30 The proposed dock is consistent with Section 4.1.1 in that there shall be no more than one  
31 principal building on the lot because KPYC does not propose to erect any building. Launching  
32 boats off the island has been a previous use and this is not changing; rather, the method of  
33 launching and accessing the boats will be different so as to better protect the shoreline from  
34 erosion. Granting the variances will uphold public safety and enhance the values of the island  
35 community and uses of water by its citizens.

36  
37 *3. The values of surrounding properties are not diminished:*

38 Janet Sylvester, broker and owner of Great Island Realty, submitted a letter attesting to how the  
39 proposed dock is unlikely to diminish the values of neighboring properties, and may in fact have  
40 a positive effect. The dock will likely enhance the overall appeal of the neighborhood by  
41 providing residents with increased access to water-related activities.

42  
43 *4. Literal enforcement of the provisions of the ordinance would result in unnecessary*  
44 *hardship:*

45 Special conditions exist that distinguish the property from others in the area. The property is thin  
46 and long, and the presence of the tidal wetlands requires a 100 foot wetland setback, which  
47 renders the lot too small to build a primary structure. In addition, building a primary structure

1 would add impervious surface development, which is contrary to the Zoning Ordinances.  
2 Therefore, the requirement to build a primary structure before an accessory structure can be  
3 approved creates a hardship. Nothing can happen on the land without requiring some sort of  
4 relief from the ZBA. The proposed dock will also allow KPYC to avoid hardships associated  
5 with transporting students through the heavily trafficked Piscataqua River.  
6

7 *5. Substantial justice is done:*

8 KPYC faces a hardship in not granting the variances because it cannot construct a building on  
9 Lot 1 in order to allow the accessory dock structure. There are many public benefits to allowing  
10 the proposed dock, specifically the safety of the sailing school program students, and protection  
11 of erosion from launching boats. No injustice would be caused to anyone by the existence of the  
12 dock, and KPYC would face substantial injustice if the variances are not granted.  
13

14 Chair Baker opened the public hearing at 8:40 p.m. and read two letters received in support of  
15 the application. Janet Sylvester of Great Island Realty provided a letter attesting to the positive  
16 impact the dock would likely have on the community and surrounding property values. Kevin  
17 McCoole, President of Piscataqua Youth Sailing Association, submitted a letter supporting the  
18 proposal for its enhancement of recreational opportunities for the community and the role it will  
19 play in fostering the growth and education of youth through sailing. Mr. McCoole also spoke at  
20 the meeting about the educational components involved in obtaining a U.S. sailing certification,  
21 which all KPYC instructors must have.  
22

23 Jeff Reilly, 70 Main Street, mentioned how the dock really will not be that big, and the proposed  
24 dock will be much safer than the existing dock. Furthermore, the KPYC will have control over  
25 how people use the facilities.  
26

27 Dylan Kimmel, present commodore of KPYC, stated that the Club's main goal is to provide  
28 access for the sailing school to further the students' education. It is vitally important to have a  
29 platform on the Back Channel, where the waters are much gentler and safer to launch boats. The  
30 construction of the dock will have minimal impact to the land, whereas no dock will have a  
31 greater negative impact to the environment because people will have to walk across the wetlands  
32 to launch their boats.  
33

34 Groves Dinning, KPYC member since 1980 and prior commodore of the Club, spoke about how  
35 this will be the 37<sup>th</sup> year of the Club's continuing education of sailing to children. The last four to  
36 five years have incorporated adult courses as well. The Club's priority is the safety of  
37 transporting the children from the present dock to the float in the Back Channel. The sailing  
38 school serves 130 to 140 students in the summer classes, and the Club offers a fund that gives  
39 out free scholarships to kids in need who want to learn how to sail, as well as scholarships to  
40 Coast Guard families.  
41

42 Doug Pinciario, 52 Riverview Road, is a member of the KPYC. He described the slippery mud  
43 banks that must be traversed when launching boats from Lot 1 without a dock structure. The  
44 dock would provide a much deeper launching point for the fleet, and would provide more safety.  
45 The intention would be for the dock to remain year-round.  
46

1 Lorne Jones, 314 Wentworth Road, noted that the sailing school is increasing in popularity, and  
2 if the State has validated KPYC as a 501(c)(7) charity, this speaks to the educational purpose of  
3 the Club. The idea of bringing more kids into the Piscataqua River is more problematic than the  
4 prospect of children crossing the State highway during the daylight to access the proposed dock.  
5

6 Charlie Tarbell, 172 Walton Road, provided a historical overview of the area. The property has  
7 been used as a dock storage area in the past. The KPYC is doing the best it can to provide  
8 education and access to the water for its members and the public in a responsible way. If there  
9 are concerns about the general public not being able to use the proposed dock, Mr. Tarbell  
10 suggested that the Town provide access to the water by constructing a dock on Town-owned  
11 land.  
12

13 Andy Keturakis, 146 Portsmouth Avenue, is a member of the KPYC. His children went through  
14 the sailing school and he attested to the challenge of the current and wakes in the Piscataqua  
15 River. This can cause a significant delay in the time it takes for the children to get onto the float  
16 where the sailing school is run.  
17

18 Glenn Kisch, 372 Portsmouth Avenue on Goat Island, is a direct abutter. He agreed that the  
19 safety issue is not to be diminished, but would also like to limit the number of kids going past his  
20 dock.  
21

22 Terri Golter, 17 Locke Road, is not a KPYC member, but was a long-time Fire Department  
23 member. She noted that the Fire Department had several water rescues and fires that they had to  
24 put out, so it would be very helpful to have a dock in the proposed location. The uniqueness of  
25 the Island is being able to use its waterways, which a dock would allow.  
26

27 Hearing no further comments from the public, Chair Baker closed the public hearing at 9:15 p.m.  
28 Ms. Goldberg had concerns about permitted use and the educational purposes of the dock. She  
29 would like more information about the legal standard involved.  
30

31 Mr. Lannon stated that if one starts with the assumption that there should be a dock on the  
32 property, then the proposal makes sense, particularly given the thought put into its impact on the  
33 environment and the visual appearance. He acknowledged that there will be people who think  
34 that there should not be a dock on the property, and appreciated concerns about the dock spoiling  
35 the views. However, he felt that the hardship is clear because the property has special conditions  
36 that prevent anything from being done to it without variances. Mr. Lannon stated that he  
37 understands the value of water access and the significant benefit that the dock would bring to the  
38 KPYC. Overall, he was leaning in favor of the proposal.  
39

40 Mr. Landry noted that as far as variance applications go, he felt that this is a very strong case for  
41 hardship given the unique nature of the lot. The only legitimate use for the property is for a dock.  
42 He pointed out that it is a bigger safety issue for sailors to navigate from the KPYC, under the  
43 bridge to the Back Channel than it is with students having to cross the road to access the  
44 proposed dock. Mr. Landry did not have any issues with the arguments presented by the  
45 Applicant.  
46

1 Ms. Tanguay agreed that in terms of the lot itself, the hardship criterion is satisfied. There is no  
2 way to have a primary structure on the lot, and she supported the dock being on the lot without  
3 having a primary structure. She was unclear if the Board needed to grant a variance for use, and  
4 wanted to have a legal opinion or the consensus of other Board members before deciding on that  
5 particular request. Mr. Lannon commented that he looks at it as an extension of a pre-existing  
6 use across the street where the KPYC facilities are located.

7  
8 Ms. Goldberg also agreed that the hardship criterion has been met. She was struggling because  
9 while she is sympathetic to the educational components of the proposal, she questioned whether  
10 it was contrary to the ordinances. Ms. Goldberg felt that the dock will change the surrounding  
11 environment significantly, and will result in an increase in motor boat traffic. Many people  
12 access the Back Channel on non-motorized equipment, and she was concerned about the  
13 negative impact the dock could have on paddleboarders, kayakers, and others. She stated that the  
14 Club is a finite and select group of people, though she acknowledged that the educational  
15 component is relevant because it is a benefit to the public interest.

16  
17 Chair Baker was supportive of the KPYC but had difficulty because it is a private club that  
18 already has a waitlist. He wondered whether the Club may not be as open and welcoming if it  
19 has greater interest and therefore a longer waitlist. The dock will enhance the demand to join the  
20 Club, and it may make the Club less open to the public. He stated that the educational purposes  
21 of the Club meet the criteria, but questioned whether the nature of the Club will change if they  
22 get the proposed dock.

23  
24 Chair Baker walked through the five criteria. Having a dock is not contrary to the public interest,  
25 but it is not ideal to have a 100 foot dock that takes up most of the navigable part of the Back  
26 Channel. However, there must be a balance between the competing demands. The spirit of the  
27 ordinance is observed given that the lot is adjacent to the primary structure. The values of  
28 surrounding properties will not be diminished, as attested to in the letter submitted by a local  
29 professional in the real estate industry. Literal enforcement of the ordinance would result in  
30 unnecessary hardship because of the special conditions of the property and the pre-existing  
31 commercial use across the street at the other KPYC property. The proposed use is reasonable, as  
32 it is reasonable to have a dock in that location. Substantial justice is done since no members of  
33 the public spoke against the proposal. It would not meet the criteria for any public benefit in  
34 denying the variances.

35  
36 Chair Baker went through the variances requested.

37  
38 **• Article 2 Section 2.3.4 Accessory Use or Structure**

39 Mr. Lannon motioned to grant the variance request for Article 2 Section 2.3.4 Accessory Use or  
40 Structure, having met all five criteria for zoning relief. Ms. Tanguay seconded. Motion carried  
41 unanimously by a vote of five to zero.

42  
43 **• Article 3 Section 3.1.1 Residential District (R-1)**

44 **• Article 4 Section 4.1.1 General**

45 Members discussed how the dock would be permitted in a family residential zone that does not  
46 have commercial docks. Ms. Tanguay felt that the use of the dock for the purposes described by

1 the KPYC meets the five criteria for relief. She agreed with Mr. Lannon that this is similar to an  
2 expansion of a pre-existing, nonconforming use if considering the KPYC lot across the street.

3  
4 • **Article 4.1.2 Permitted Uses**

5 Some members struggled with this request. Chair Baker spoke in favor of granting this variance,  
6 provided that the dock continue to be used for educational and public purposes.

7  
8 Chair Baker motioned to approve the application of Kittery Point Yacht Club, owner of 350  
9 Portsmouth Avenue (Lot B, Tax Map 14, Lot 1), as submitted, having met the five criteria for  
10 zoning relief from Article 2 Section 2.3.4 Accessory Use or Structure, Article 3 Section 3.1.1  
11 Residential District (R-1), Article 4 Section 4.1.1 General, and Article 4.1.2 Permitted Uses, to  
12 permit construction of a dock, provided that the dock will serve continuous access for  
13 community educational programming and Town emergency services. Mr. Landry seconded.  
14 Motion carried unanimously by a vote of five to zero.

15  
16  
17 **3. Case 2024-2. Applicant, Kittery Point Yacht Club, owner of 350 Portsmouth Avenue**  
18 **(Lot B, Tax Map 14, Lot 1), has requested a hearing to Appeal an Administrative Decision.**

19  
20 Mr. Severance withdrew this request for an administrative appeal in light of the variances that  
21 the KPYC received.

22  
23  
24 **4. Approve Minutes.**

25  
26 Mr. Gardner moved to accept the December 2023 minutes as submitted. Mr. Landry seconded.  
27 The motion carried unanimously.

28  
29  
30 **5. Set Date of Next Meeting.**

31  
32 Chair Baker announced that the next Zoning Board of Adjustment meeting will be held on  
33 Tuesday, February 20, 2024 at 7:00 p.m. at the Town Hall.

34  
35  
36 **6. Adjournment.**

37  
38 There being no further business, Mr. Landry moved to adjourn the public meeting. Mr. Gardner  
39 seconded. The motion carried, unanimously, and the meeting adjourned at 10:02 p.m.

40  
41 Respectfully Submitted,

42  
43  
44 Meghan Rumph  
45 *Secretary*