

**APPROVED**  
**New Castle Board of Adjustment**  
**April 17, 2014**

**Public Hearing re: Donald McEvoy & Greta McEvoy, 10 Fellows Court, Map 13, Lot 24**  
**Public Hearing re: Clarissa Christensen, 83-87 Piscataqua Condominium, Map 17, Lot 37/38**

**BOARD MEMBERS PRESENT:** Todd Baker; Russ Cox; Mark Gardner; Donald Moore;  
Ned Robinson; Will Smith

**BOARD MEMBER ABSENT:** Susan Stetson

Chairman Robinson called the meeting to order at 7:00 p.m.

**Public Hearing Re: Donald McEvoy & Greta McEvoy, owners of real property commonly known as 10 Fellows Court, Tax Map 13, Lot 24:**

**GUESTS:** Donald McEvoy, Greta McEvoy, applicants; Anne Whitney, Architect, representing the applicant

Chairman Robinson announced this was a public hearing to consider whether three variances should be granted. The variances requested are as follows: [1] Relief from the provisions of Article IV, Section 4.2 Table 1 of the New Castle Zoning Ordinance which limits the height of a building to 32 feet above grade to permit the renovation of an existing residence so that the renovated structure will have a height of 34 feet above grade; [2] Relief from the provisions of Article IV, Section 4.2.5 which limits the Maximum Building Area on this particular lot to 1952 square feet to permit the construction of an addition which will increase the Building Area from 3160 square feet by 10.8% to 3504 square feet; [3] Relief from the provisions of Article VII, Section 7.5.1, which prohibits the expansion of a non-conforming structure, such expansion, when completed, will make that structure more non-conforming. The public hearing has been properly advertised, abutters have been notified and all fees paid.

Due to a conflict of interest, Cox recused himself as a voting member for this public hearing. The Chair announced that the voting members for this hearing would be Baker; Gardner; Moore; Smith and the Chair.

Donald McEvoy said he is requesting the three variances to provide neighborhood equality. What they have is a three house mini development. Fellows Court is a private drive and he has one of the three houses that are on Fellows Court. The houses were all built in the same time frame and he has signatures from the abutters who are in agreement that the variances should be granted. He has some hardship in that it is a private lot. It has a 12 ft. wide driveway and it has one garage parking area, it has no off street parking and the parking area itself, is in the low spot.

McEvoy presented to the Board photographs of 10 Fellows Court with the adjacent residences; the right side elevation; the grades from Fellows Court; the ponding at the garage; the left side elevation; and the rear elevations from left and right sides, (Attachment A.)

What McEvoy is looking for on the first variance is to get some height relief to mitigate the problem that is in the low lying area but also to create relief since the basement itself does not even have 7 feet of ceiling height.

The house is dated and he wants to preserve it. In doing so he is going to look at the structure to re-support the house with columns, and to add a little more square footage that is reasonable. He is asking for a bit more than 10% increase. The 10% is not coming from one area in the house, it is coming from several areas. Some of the area is going in the basement and underneath one of the areas in the basement is a bathroom and the pipes are not winterized. He is hoping to resolve that issue as well as 5% on one side of the house and 5% on the other side of the house. He wants to protect the house from the winter and weather. Also, there is an overhang porch and he is not only looking to making it more aesthetically pleasing but also to make it an all-weather type.

McEvoy said it was originally a summer house and it has been winterized but winterized in a sense that it has inferior plumbing and heating that is exterior for the interior walls. It has hot water heat but all of the pipes are exposed inside the walls.

McEvoy is trying to preserve an old house and he does not want to tear it down. He is hoping to get support that he can get these three variances approved by the Board.

McEvoy pointed out that his Architect, Anne Whitney, has worked with him on several projects and he is very comfortable and confident with what she has put together. What he is looking for, from a variance perspective, is to have an equal neighborhood in height. From the photographs he presented to the Board, they will see that the roof line of all three dwellings have a big difference in roof height.

Chairman Robinson asked if the Board had any comments.

Moore is unclear in what the applicants wants to do and he is not clear in what the applicant wants to achieve. He noted the applicant mentioned height relief to get the garage in the basement in relation to flooding. He asked for clarification in what the relationship is between the outside grade and the present basement and how are you going to get the height in the basement.

McEvoy replied he would be raising the basement grade up a couple of inches because the front of the house is the one car garage. He is also asking for a 2 ft. height relief and of that 2 ft., approximately 4 or 6 inches will come in the form of raising the basement.

Baker assumes that the applicant measures the house to 32 ft.

Whitney said they are proposing to jack the house up and most of this basement is a combination of rock foundation and wooden walls that were built on the grade.

Their proposal is to jack the house up and put a new foundation underneath it. The 2 ft. is to gain flexibility to pick the slab up to add some structure on the first floor and to gain some reasonable headroom in the garage.

Baker asked for clarification on the elevations.

Whitney walked Baker through the drawings that were presented. What they are trying to do is to take this box that is existing and lift it up and create some area on the basement level.

Baker asked Whitney if they plan to continue using the garage area as a garage.

Whitney replied yes, and what they are proposing to do is presently there is just a single garage bay. They plan on adding a second bay next to the present bay, She explained the front elevation as it exists now and pointed out that the basement has a very small garage and noted that in the corner there is a half bath above it and that is where the plumbing pipes are exposed under that half bath. When they put the foundation in the plan to fill in that corner that will be within the envelope of the house. In the new plan, the garage will be enclosed, there will be the basement area, the added bay in the garage and all of this will be in the same square footage.

First Floor – the building area stays the same and they are losing a tiny bit because they are taking the east side of that porch, (Attachment A) and expand the living room slightly and have a smaller entry porch. Other than that, the square footage stays the same. She noted that it does not affect the building area on the first floor because all the area they are working with has already been counted as building area.

Second Floor – they plan on taking the space above the den and also take the space that they enclosed in the porch and bring that up to two stories.

Whitney reviewed the existing and proposed basement level plan; the first floor level plan; the second floor level plan; she also discussed the left side elevations; the front elevations; the right side elevations; the roof plan; and the rear elevation.

Moore asked Whitney to discuss what the rationale is for the Board to consider a variance for increase in space.

Whitney addressed the five criteria:

1. *Variance will not be contrary to the public interest, (Attachment B)*
2. *The spirit of the ordinance is observed, Attachment B)*
3. *Substantial Justice is done, (Attachment B)*
4. *The values of surrounding properties are not diminished, (Attachment B)*
5. *Literal Enforcement of the provisions of the ordinance would result in unnecessary hardship, (Attachment B)*

*Variance request #1 – Height Variance, (Attachment B)*  
*Variance request #2 0 Building Area, (Attachment B)*

Chairman Robison asked if the Board had any comments.

Smith asked if the applicant will be using his residence year round. McEvoy replied yes.

Moore questioned the total area and pointed out that it was almost a full floor.

Whitney agreed as she did the calculations at 50%

Moore came up with 3,345 sf. He has trouble with Whitney's characterization that this is a small house.

Whitney replied the actual living space is around 2100 s.f.

Smith questioned the lot sizes of their surroundings and asked if they were comparable to their lot.

McEvoy said they are the second largest lot of the three houses.

The Chair asked for public comments.

Chris Peterson, abutter, speaks in favor of this project because they are maintaining the nature of the historical houses.

Chairman Robinson asked if the public had further comments. There were none. He asked for the Board's comments.

Smith questioned the dramatic increase in size. What other options has the applicant looked at that might be less increase. The applicant is already significantly over what is allowable on the lot size.

McEvoy replied he could change the entire character of the house. It is a summer cottage and there is not a great deal of square footage.

Whitney replied the gross square footage of the living area of the first and second floor is 2160, just under 2200 s.f.

Smith asked if the applicant changed the fundamental character, would that satisfy their needs of the 1952 sf. that is allowed.

Whitey replied that would not solve the problem.

Smith assumes they have only looked at one proposal and they have not looked at an alternative that might be a less dramatic increase of the amount of nonconformance of the property.

Whitney replied the percentages are so high because the count is so small to start with. She did not feel this is an over development of the lot.

She opined that the proposed additions seem to be the least intensive way of developing the property so as to provide the applicants some elbow room in a very small house.

Gardner assumes the applicant is looking for approximately 344 sf.

McEvoy replied it is roughly 150 sf. on one side of the house and 160 sf. on the side of the house.

Chairman Robinson asked the applicant if any part of the basement is used for purposes other than just storage.

Whitney replied the basement has a laundry room, a furnace and workbench type of space. It is not going to become finished living space.

Deliberations by the Board followed.

Moore feels the Board needs to separately consider the various requests. His reaction to the height to solve the headroom problem and getting a useful garage free of wetness, he thinks there is a good case for that.

Moore feels those arguments do not bear weight on the living area expansion. He feels the Board should consider these variances as in two parts. The Board could make motions to approve one variance and not the other.

Moore said that raising the house to solve the problem of headroom and flooding is a good argument there. He does not see compelling arguments for the expansion. If you looked at it not on total but on living area and disregard the basement, the applicant considered 2100 sf. and the increase is 345sf. It is a 15% increase of usable living area and that is a significant increase. One of the arguments the applicant has made is to provide neighborhood equality. He does not feel that is necessarily a goal of the zoning ordinance. This Board has turned down numerous applications that were for much smaller percentages. He has trouble with the continued reference that this is a small house. A 2100 sf. living space is not a small house by most people/s definition.

The people of New Castle had a very strong reaction against what happened in Bosun's Hill and that led to the tightening of the zoning ordinance. It is not necessarily a hardship if the applicant's house looks different than the others. He has trouble seeing justification for the 15% expansion in just living space. Either way, they need to be separated.

Gardner agrees with Moore regarding the height issue and he has no trouble with it.

Baker has no problem with the height.

Smith also has no trouble with the height issue.

Chairman Robinson has no problem with the height issue but he has concerns regarding a building that is over 100 years old and how it is going to take well to being lifted and whether there is any danger of the building collapsing during the process and having to come back and discuss a whole different series of possibilities.

Height Variance:

**Moore moved for the ZBA to approve the project, as submitted, relative only to raising the building and modifications in the basement without speaking to any increase in building area. Smith seconded the motion.**

**Approved.**

Smith is troubled by a dramatic amount of the size increase. He recognizes that the surrounding houses are somewhat bigger. The bulking in the side of the porch area and, potentially, a room over it, he could accept. It seems that there is also bulking up on the other side of the property as well. He feels this is an excessive increase in building area.

Gardner is not troubled by the application as well and he is sympathetic of the argument for the variances. The reason that he is not as concerned about the increase is that it takes into consideration the characteristics of this unique little neighborhood of three homes. He does not see this plan being that dramatically different than these other houses. It is a unique piece of property, there is a hardship and he is sympathetic to it.

Moore asked the applicant if this property would be served by town sewer. Whitney replied it would be.

Moore understands the applicant's desire but as we said very often, anytime this Board grants variances, it is forever, it makes it bigger. The New Castle Master Plan stresses the changes in nature of the island community and ...?...but the town has decided that is not the way to go. As a Board we are always faced with everyone coming in with the most compelling arguments of why, for them it is OK, and that is the tragedy. Everyone benefits personally by doing something to the detriment of the total. He looks at the whole island, not just the neighborhood. The ZBA has to define our arguments from the entire community, not the immediate abutters.

Todd hears what Moore is saying and he does not agree that all the changes the applicant is proposing would be detrimental to the Town of New Castle.

Moore is sympathetic to what the applicant wants to do. He is un-sympathetic and unmoved by arguments that I can always build something that looks terrible.

Chairman Robinson said this creates a problem for everyone because of the fact that it is a desirable result of the applicant to achieve but this is not why the Board is here.

We are here primarily to try to administer the zoning ordinance. This proposal is a substantial change but the argument has not swayed him away from what the ordinance states.

**Moore moved for the Board to deny the application with respect to the proposed increase in living space allowing the applicant, without prejudice, to come back with an alternative proposal. Smith seconded the motion.**

The Chair suggests the Board should make a reference to the specific criteria.

**Gardner is against the motion to deny. Even though it is a weak argument on hardship, he does not see this changing the character of the town and he feel this is a reasonable proposal given this particular piece of property.**

**Baker is against the motion to deny.**

**Moore votes for the motion to deny as it does not meet the test of the spirit of the ordinance; He does not see there is substantial justice being done; the hardship has not been established in a sense that hardship is to be associated with the lot. It is a small lot and it is not logical to say it's a small lot and that is a hardship, therefore, you can ignore it.**

**Smith votes in favor of the motion to deny. He believes that the spirit of the ordinance is, in fact, not observed; he does not see that substantial justice is done by approving the variance; and he does not see a demonstration of unnecessary hardship but there may be alternatives for the applicant to return with another proposal.**

**Chairman Robinson votes in favor of the motion to deny. He is very sympathetic to the applicant and feels there is a possibility of being able to develop the property, making it more enjoyable. It is not necessarily a hardship issue and it would be better to explore whether there are other ways they could meet the fact that it is a small lot. He does not feel that the hardship issue has been satisfied.**

**Motion Denied.**

Chairman Robinson closed the public hearing for Donald McEvoy & Greta McEvoy.

**Public Hearing Re: Clarissa Christensen, 83-87 Piscataqua Street Condominium, Map 17, Lot 37:**

**GUESTS:** Clarissa Christensen, applicant; Attorney Bernie Pelech, representing the applicant

Chairman Robinson announced this was a public hearing for Clarissa Christensen, 83-87 Piscataqua Street Condominium, Tax Map 17, Lot 37.

The applicant requests a hearing to consider two variances: {1} Relief from the provisions of Article VII, Section 7.5.1, of the New Castle Zoning Ordinance to expand a nonconforming structure, the nonconformity being the structure's location within the 100 foot Tidal Buffer Zone. The expansion of the existing nonconforming structure will make it more nonconforming;

{2} Relief from the provisions of Article IX, Section 9.2.4.1 to allow construction of an addition to the existing nonconforming structure within the 100 foot Tidal Buffer and further to allow surface alterations within the 100 foot Tidal Buffer associated with the new construction as well as the construction of a patio and walkway. The public hearing has been properly advertised, abutters have been notified and all fees paid.

The Chair said the Board received a Shore Land Impact Permit from DES. Gardner has recused himself as a voting member for this hearing. The voting members for this hearing are Todd Baker; Russ Cox; Donald Moore; Will Smith and the Chair.

For the record, Attorney Bernie Pelech said they have also appeared before the Conservation Commission with regard to this proposal and they have unanimously recommended approval of the Conditional Use Permit and the granting of the variances.

Attorney Pelech reviewed what is existing and what is proposed. The addition to the rear of the original home will be demolished which is approximately 2 ft. from the property line. The large patio is also coming out, the porch will also be demolished and a portion of the existing structure will also be removed.

What is being proposed, he pointed to the patio on the plans and said it was below 18 inches so it is a pervious patio and it does not need to meet setbacks requirements. The new structure meets all of the setback requirements for the right side yard and the vast majority of it is outside of the 100 ft. buffer. The driveway aprons, the walkways are also pervious so that rain water/storm water percolates through this. The net result of this is 55 sf. less of impervious surface being proposed than what is there now. They are reducing the amount of impervious surface from the existing to the proposed. They are actually increasing the amount of pervious and reducing the amount of impervious by 55 sf.

Attorney Pelech said in addition to that, John Chagnon, Ambit Engineering, has taken a number of steps to mitigate storm water runoff. That consists of the following: 1} the new addition will have a stone drip apron which is 24" of crushed stone around the edge of the building where the storm water runoff will fall into that with a gravel base underneath so that the storm water runoff will infiltrate into that stone drip basin;

2} they have created all of the areas, i.e., the walkway, the patio in the back, the driveway apron for the garage, they are all pervious so that the storm water will run through there. They have enhanced the buffer planting area at the request of the Conservation Commission so that more storm water will infiltrate rather than run across the road;



3} this building is nonconforming because the majority of it is within the 100 ft. buffer. Obviously, it was built before there was any such thing as the 100 ft. buffer and before there was any such thing as a side yard setback. It does not comply; it is nonconforming because it is within the 100 ft. buffer and its nonconforming because the side yard setback is a couple of feet. With regard to the 100 ft. buffer, they have actually reduced what is in the 100 ft. buffer by 55 sf. and with regard to the side yard setback the patio is in compliance.

Attorney Pelech said they are requesting two variances. Article 7, Section 7.5.1 an expansion of a nonconforming structure. It is within the 100 ft. buffer and it is within the side yard setback. Any addition to that is going to require a variance.

The second variance they are requesting is Article IX, Section 9.2.4.1 to allow construction of an addition to the existing nonconforming structure within the 100 ft. tidal buffer and further to allow surface alterations within the 100 ft. tidal buffer associated with the new construction as well as with the placement of new utility lines from Piscataqua Street.

Attorney Pelech feels they meet the criteria for both of the variances. With regard to building something new in the buffer, yes they are building something new but what they are building is less than what they are taking away. It is a net gain and they are becoming more conforming with regard to the amount of impervious surface in the 100 ft. buffer.

With regard to the side yard setback, they have about 1 ½ ft. or 2 ft. here and they have the patio which is below 18 inches. All of the new additions comply with the right side yard setback.

Moore asked Attorney Pelech for clarification on the other properties along Lot 17 & 38.

Attorney Pelech replied there are three dwelling units on this lot. They went before the Planning Board and received permission to condominiumize the three structures into two condominium units. They also received permission from the Historic District Commission to demolish the two units which were full of mold, infested, and also nonconforming. They have been demolished. They also received permission from the HDC to construct a new residence and they have received all the necessary approvals from NHDES as well as from the Building Inspector.

Attorney Pelech addressed the five criteria:

1. *Granting the variance is not going to be contrary to the spirit and intent of the ordinance, (See Attachment C)*
2. *Granting the variance would benefit the public interest, (See Attachment C)*
3. *No diminution of property values, (See Attachment C)*
4. *Substantial Justice, (See Attachment C)*
5. *Denial of the variance would be an unnecessary hardship, (Attachment C)*

In conclusion, it is the applicant's request that the board grant the two (2) requested variances, as granting the variances will not be contrary to the spirit and intent of the ordinance; will not be contrary to the public interest; will result in substantial justice being done; will not result in any diminution in value of surrounding properties; and, a hardship exists due to the special conditions of the property which requires a variance being granted by the board.

The proposed use is a reasonable use and there is no fair and substantial relationship between the intent of the ordinance as it is applied to this particular piece of property.

Baker asked for clarification regarding the driveway.

Attorney Pelech replied the existing driveway is gravel or crushed stone and NHDES treats this as impervious. What they are proposing to do is to have an impervious driveway up to a certain point but then to have all the rest of the driveway pervious.

The Chair asked if the Board had further questions. There were none. He asked for public comments.

Samantha Fuller, Elm Court, is here on behalf of her mother, Audrey Galvin, and asked for clarification regarding the garage height. Attorney Pelech said it would probably stay the same height.

Fuller is very concerned that this project is destroying the antiquity of the entire area and the character of the village. She also feels that to build a huge garage and a room above the garage is not necessary. She feels it is too big and it will ruin the feeling of New Castle.

Smith asked Fuller if she made those feelings known to the Historic District Commission. Fuller replied no as she was not aware when the HDC had their meeting.

Attorney Pelech said with regards to the Conservation Commission that has reviewed this project on two occasions and taken a site walk, they have agreed to what they are doing is better than what is there now. The Historic District Commission applauded their plan and wanted us to reduce the size of the gable over the garage which would be fine. They do meet the criteria, although they are expanding a nonconforming structure, they are decreasing the nonconformity in both instances.

The Chair asked if the public had further comments. There were none. He closed the public comments of this public hearing.

Deliberations by the Board followed.

Smith feels to the degree in which the nonconforming aspects have been mitigated, in those areas in which the variance is being asked for, he would say they meet the criteria.

Cox agrees with Smith. He said that shoreline setbacks were never designed for this kind of structure, open land abutting the river. This is hardly worth worrying about. The variance requested relates solely to the Shore Land Protection Act. He feels that everything is in order; this project is very nicely done.

Moore said this is a very limited issue and it improves it.

Baker said this is an improvement to a building that needs repair. He has mixed feelings about this project when neighbors say that this project is changing the character of the neighborhood and their property values will be diminished. He questioned what the impact of this development will have on surrounding properties.

Gardner is not voting but he feels there is a flaw in Attorney Pelech's argument that this project will not affect the property values for the neighbors. There is a potential impact that this development will have on surrounding properties to the extent that it will affect their property values.

Chairman Robinson said the question that was originally presented to this Board was the 100 ft. buffer zone which was designed to protect the Piscataqua River. The question is how will the proposal affect the Piscataqua River? He feels that this property has little impact on the Piscataqua River. Does this project affect property values on Elm Court? That is not within this Board's purview, based upon this application.

Gardner agrees and feels this property has very little impact on the Piscataqua River. If one of the criteria that needs to be met is whether the surrounding property values are not impacted, he is not sure that Attorney Pelech has succeeded in that argument.

**Cox moved for the ZBA to approve the applicant's application, as presented. Smith seconded the motion.**

**Cox votes in favor of the motion. He feels this is a miscarriage of the wetlands setback law and the garage is really not involved in the wetlands. He feels the entire plan is a reasonable effective job of improving the property within the zoning bylaws.**

**Smith votes in favor of the motion to approve on the basis that the setback from the side is improved and the wetland situation is improved.**

**Moore votes in favor of the motion to approve. The only question that he is paying attention to is the reduction of values. He has looked at the plan and understands it. Much of the green is porous driveway apron and walkways which is not going to reduce property values and it is only the garage that affects the views and the garage could be permitted separately and that would be an unnecessary hardship to the applicant.**

**Baker votes in favor for the motion with reservation. He is sympathetic to the homeowners.**

**Chairman Robinson votes for the motion to approve because the question presented to this Board had to be regarding the Shore Land Buffer. He feels that both, the State law and the local laws, the obligations to receive the variances have been met.**

**Approved.**

The Chair closed the public hearing for Clarissa Christensen.

**Review of the ZBA Minutes of March 20, 2014:**

**Cox moved for the Board to approve the ZBA Minutes of March 20, 2014, as amended. Baker seconded the motion. Approved.**

**Adjournment:**

**Cox moved to adjourn the meeting. Baker seconded the motion. Meeting adjourned at 9:00 p.m.**

Respectfully Submitted,

Anita Colby  
Recording Secretary

Attachment A: Photographs submitted regarding the property on Fellows Court  
Attachment B: Anne Whitney addressed the five criteria for Donald & Greta McEvoy  
Attachment C: Attorney Pelech addressing the five criteria for Clarissa Christensen