

# Approved: January 21, 2016

Town of New Castle Zoning Board of Adjustment  
December 17, 2015  
7:00 PM

## **Public Hearings:**

**Case #2015-04 filed by Kathleen Mahoney of David F. Mahoney Trust, owner of 106 Beach Hill Road (Tax Map 10-30). Applicant requests a variance for replacement of septic system within the wetland buffer.**

**Case #2015-05 filed by Mark & Sally Fodero, owner of 69 Piscataqua Street (Tax Map 18 Lot 11-1). Applicant requests a variance to allow a 486 square foot addition, which would exceed the permitted square footage by 227 square feet.**

**Members Present:** Chair Todd Baker, Russell Cox, Mark Gardner, Rebecca Goldberg

**Members Not Present:** John Fitzpatrick, Margaret Sofio

**Others Present:** Susan J. Faretra, Sally Fodero, Mark Fodero, Tim Driscoll, Bernie Pelech

Chair Baker called the December 17, 2015 meeting of the New Castle Zoning Board of Adjustment to order at 7:06 pm.

1. Public Hearing: Chair Baker opened the Public Hearing

**A. Case #2015-04 filed by Kathleen Mahoney of David F. Mahoney Trust, owner of 106 Beach Hill Road (Tax Map 10-30). Applicant requests a variance for replacement of septic system within the wetland buffer.**

Susan Faretra spoke to the specifics of the variance request. She displayed a map with the property boundaries, the abutters and the location of the existing system and the proposed system. Ms. Faretra noted that a portion of the existing system is located on an abutter's property. She said the existing system is failing and should be located entirely on the property owner's lot. Ms. Faretra said she is proposing a clean solution aerobic treatment tank leading to a small leach field (with the old leach field being removed). She said the new leach field meets subsurface rules and is not within 75 feet of a poorly drained fresh water wetland (no State waiver is required). Ms. Faretra said the new leach field is not within 125 feet of fast percolating soils; but they are requesting that the tank be located 62 feet from a poorly drained fresh water wetland and that the new leach field be located 75 feet from fast percolating soils. She referred to a letter from the abutter who expressed pleasure at the leach field being removed from his property. Ms. Faretra discussed other possible areas for the leach field to be located on the property; noting that due to the poor soils, ledge outcroppings, a substantial stone wall and large trees the possibility of locating the system elsewhere is greatly reduced. She noted she has been before the Conservation Commission and the Wetland Bureau application has been submitted; as has the Subsurface Bureau application. Ms. Faretra said the Subsurface Bureau has seen the design, but will not approve the application until both the wetland and shoreland permit are submitted. She reported that the shoreland permit cannot be submitted until the wetland permit is completed (which just occurred). Ms. Faretra said the shoreland permit will be submitted next week and then they will go before the Planning

Board next month. She said that the area where the leach field will be located is currently grass lawn; and some pavement removal will be necessary to remove the existing septic tank.

Criteria for a Variance:

1. No diminution of property values:  
Applicant response: The upgraded sewage disposal system will be located a minimum of 15 feet away from any abutting property lines. Therefore the abutting properties should not be directly affected by the systems minimal addition of grading. Having an upgraded wastewater disposal system will add value to this property.
2. Granting the variance would benefit the public interest:  
Applicant response: The existing leaching area is showing signs of failure and the aerobic treatment tank delivers a much cleaner wastewater to the soil.
3. Denial of the variance would be an unnecessary hardship to the owner:  
Applicant response: A sound wastewater disposal system could not be designed for this lot. There is inadequate area for a wastewater disposal area on the lot that meets all the wetlands and water line setbacks.
4. Substantial Justice:  
Applicant response: The upgrade of this failing system is in the best interest of the current and future property owners by knowing that the wastewater disposal from this home will be properly treated and dispersed with the lots boundary.
5. Not contrary to the spirit of the ordinance:  
Applicant response: The upgrade of this system will help protect the wetlands, wildlife habitat and groundwater.

John Fitzpatrick asked if the tank will be located further away from the wetlands than the current tank.

Ms. Faretra said the proposed placement of the new tank will be further from the wetland.

Mr. Fitzpatrick asked if the Conservation Commission approved the proposed plan.

Ms. Faretra said the Conservation Commission did approve the proposed plan and noted that the Wetland Bureau Application was submitted as a Minimum Expedited application which the Conservation Commission signed.

Chair Todd Baker closed the Public portion of the Public Hearing at 7:21 pm.

*Russell Cox MOVED that the variance request for Case #2015-04 filed by Kathleen Mahoney of David F. Mahoney Trust, owner of 106 Beach Hill Road (Tax Map 10-30) to replace a septic system within the wetland buffer be accepted as filed, contingent on the receipt of other necessary permits; this was SECONDED by John Fitzpatrick and APPROVED unanimously.*

**B. Case #2015-05 filed by Mark & Sally Fodero, owner of 69 Piscataqua Street (Tax Map 18 Lot 11-1). Applicant requests a variance to allow a 486 square foot addition, which would exceed the permitted square footage by 227 square feet.**

Bernie Pelech noted that the Foderos' purchased the property at 69 Piscataqua Street in October. He said they have designed and had approved by the Historic District Commission a one story addition to the back of the house. Mr. Pelech noted that the proposed addition meets the setback and lot coverage requirements but does not meet the building area requirements and they are seeking a variance for that issue. He said the building area requirement in New Castle is somewhat ambiguous and there has been

debate regarding the wording of the ordinance (at question is the phrase "...patio and storage sheds less than 80 square feet are exempt from the building area requirements). Mr. Pelech said the garage is 300 square feet, the deck is 135 square feet and if the garage were excluded the plan would not need a variance; if the deck were excluded the plan would only be a few feet over the limit.

Five Criteria for a Variance:

- 1) No diminution of property values:  
*Applicant response:* The proposed addition would not diminish the value of surrounding properties; all abutters have been supportive of the project. Some abutters spoke at the HDC meeting and have verbally indicated their support to the applicant.
- 2) Granting the variance would benefit the public interest:  
*Applicant response:* The proposed addition meets all of the Town setbacks; there is adequate light, adequate access for emergency vehicles and the addition does not affect public safety or welfare.
- 3) Denial of the variance would be an unnecessary hardship to the owner:  
*Applicant response:* The denial of the variance would create a hardship to the owners if denied; they would need to cut back the addition greatly or forego it completely.
- 4) Substantial Justice:  
*Applicant response:* The denial of the variance would not benefit the public interest and the Historic District has approved the plans.
- 5) Not contrary to the spirit of the ordinance  
*Applicant response:* The proposed addition does not alter the characteristics of the neighborhood.

Chair Baker noted that the proposed patio is a few inches into the setback and also requires a variance.

Mr. Pelech said that the lot is a relatively small lot (non-conforming) and was once part of a much larger lot. He said it is unique and because it is non-conforming, when applying the building area calculations to the small lot they come up with an unreasonably small house that can be built. He said the proposed addition meets all of setbacks and the proposed addition meets lot coverage. Mr. Pelech said it is a minimal amount of relief being asked for that meets the five criteria for a variance.

Sally Fodero explained that the deck is being built on top of the existing garage by extending the existing patio five feet (which is 10 inches over the setback).

Mr. Mark Fodero said that the patio will wrap around the side of the house with a half wall on the side and a railing on the front portion.

Mr. Fitzpatrick asked if the side stairs are being moved out of the setback.

Ms. Fodero said the stairs will be moved to provide access to the front door. She said they will still be within the setback; but will be more than conforming than they currently are. Ms. Fodero said the entire garage was taken into account when calculating the square footage; but the garage and the basement have ledge in them which lessens the usable living square footage.

Chair Baker asked if there was any public comment regarding the application; hearing none he closed the Public portion of the Hearing at 7:45 pm.

Russell Cox said this is not an uncommon situation in the town since there are a reasonably large number of small lots with houses on them. He said the ordinance was designed to prevent large houses from overwhelming their lots. Mr. Cox said the point of the ordinance is to keep small homes from being added on to and exceeding the reasonable size for the downtown area. He said the ordinance was carefully drafted and thought through. Mr. Cox said this is a case of overbuilding a small lot and could set a precedent. He noted that the plans violate a number of the ordinances and affects the class of properties in town. Mr. Cox encouraged the members to look carefully at this variance request. He said the ordinance is what it is; and there is no serious hardship in this application. Mr. Cox said there are ways to

accommodate this plan to have it fall within the ordinance. He said he feels it is important to defend the ordinance to protect the downtown area from being overwhelmed by small lots being overbuilt and allowing this variance would make it difficult to defend the ordinance. Mr. Cox asked what would be the alternative if the plan were to fit within the ordinance. He said he thinks the request should be denied.

Mark Gardner said he agrees up to a point. He said the point is correct; however there is an ambiguity in the ordinance and until that is cleared up there is a problem. Mr. Gardner said the ambiguity is the use of the term dwelling unit and how it is defined in the ordinance. He said if the garage were not counted in the calculation a variance would not be needed.

Mr. Cox said the intent of the ordinance was to include garages.

The members reviewed the line in question of the ordinance:

"...the maximum building area in a dwelling unit shall be..." and noted that the definition of a dwelling unit is later defined as "...one or more rooms ...in a dwelling structure designed as a unit for occupancy by not more than one family for living and sleeping units." It was noted that thus a dwelling would not include a garage; however the building area calculations include garages. It was also noted that the language regarding patios, decks and storage sheds of greater than 80 square feet is also ambiguous. The question is does the greater than 80 square feet refer to patios, decks and storage sheds or to just storage sheds? It was noted that it was determined that the 80 square feet applies to storage sheds only.

Chair Baker said the conditions of each case are unique and will not be exactly the same as another case. He said if the conditions of this case warrants a variance it does not mean that every other application will be provided a variance; each will have its own special conditions.

Mr. Pelech noted that this board does not set precedent and each case is argued on its own merit.

Mr. Fitzpatrick asked for the hardship issues to be reviewed.

Mr. Pelech said the extremely small lot as compared to other lots in the area is one hardship and the garage and basement consisting of ledge being included in the dwelling area is another hardship. He said the proposed plan does not over-intensify the use of the property; it does not exceed the lot coverage and mostly meets required setbacks (other than 10 inches of the patio).

Mr. Fitzpatrick said the basement and garage have special conditions that render it different than other basements and garages.

Mr. Fodero displayed photographs of ledge in the basement; which makes the basement unusable and photos of ledge in the garage. He also noted that the floor in the basement and garage are not level due to the floors needing to be poured to accommodate the ledge and cannot be used as living area.

Mr. Fitzpatrick said that due to the special considerations of the basement and garage it makes it non-precedent setting.

*John Fitzpatrick MOVED the variance request for Case #2015-05 filed by Mark & Sally Fodero, owner of 69 Piscataqua Street (Tax Map 18 Lot 11-1) to allow a 486 square foot addition, which would exceed the permitted square footage by 227 square feet be granted; this was SECONDED by Mark Gardner and APPROVED by a vote of four in favor and one against.*

Chair Baker said the members need to discuss the ambiguity in the ordinance.

Mr. Fitzpatrick asked what the intent of the ordinance was when it was written.

Mr. Cox said the intent was to limit the square cubage of a building; including garages.

Mr. Gardner said the wording of the ordinance needs to be changed because the definition of a dwelling unit does not include garages.

Chair Baker said the purpose of the zoning ordinance is for the town to have reasonable restrictions of private property rights and it should be a restriction that benefits the community. He said the ZBA is a safety valve to allow reasonable request to pass through while keeping the ordinance.

Mr. Cox said the property owners did not explore the possibility of conforming to the ordinance and are not experiencing great hardship.

Chair Baker said he would agree if there were others opposing it. He said the special conditions of the basement make it so it should not have been included as a portion of the dwelling unit. Chair Baker suggested that the ZBA make a recommendation to the Select Board that the wording be revised.

Mr. Gardner suggested recommending to the Select Board that they hire someone to investigate and research section 4.2.5 and the definition of a dwelling and possible wording changes.

Mr. Fitzpatrick said the ordinance is a tool to prevent unreasonable building; the variance is another tool to allow reasonable things to happen. He said the ordinance can never cover every situation.

Rebecca Goldberg said she does not feel what this variance was asking for was extreme.

Chair Baker said he feels it was a reasonable request. He said the ZBA's purpose is to serve the town and allow reasonable variances that do not harm the town.

**2. Approve minutes of meeting held on September 24, 2015**

*John Fitzpatrick MOVED to approve the September 24, 2015 minutes as written; this was SECONDED by Mark Gardner and APPROVED unanimously.*

*\*Ms. Goldberg abstained as she was not present at the September 24, 2015 meeting.*

**3. Old Business - No "Old Business" was discussed at this meeting.**

**4. Other Business to come before the Board –**

Chair Baker noted that the ZBA could use another alternate member and asked the members to suggest anyone that would be interested.

**5. Set date of next meeting January 21, 2016**

**6. Adjournment**

Mark Gardner MOVED to adjourn the December 17, 2015 meeting of the New Castle Zoning Board of Adjustment at 8:24 pm; this was SECONDED by John Fitzpatrick and APPROVED unanimously.

Respectfully submitted by,

Susan Lucius, Secretary to the New Castle Zoning Board of Adjustment