

**NEW CASTLE ZONING BOARD
TUESDAY, DECEMBER 19, 2017
7:00 P.M.**

Board Members Present: Todd Baker, Chair, Rebecca Goldberg, Margaret Sofio, Ben Lannon, Mark Gardner, John Fitzpatrick

Board Members Absent: none

Chair Todd Baker opened the meeting at 7:00 p.m.

- 1. CASE# 2017 – 08 filed by Lawrence Leavitt and Virginia Battles, owners of 19 Lavenger Lane, Map #4, Lot#16, requesting a variance from Article 20 Section 4.2 & 7.5, in order to allow encroachment on the right side setback and expansion of a pre-existing non-conforming structure.**

Ms. Rebecca Goldberg is an abutter, Mr. John Fitzpatrick is friendly with the abutters. Ms. Goldberg offered to recuse herself, despite seeing no bias. Chair Baker agreed and named the voting members: Ms. Margaret Sofio, Mr. Fitzpatrick, Mr. Ben Lannon, Mr. Mark Gardner and himself.

Anne Whitney, architect, assisted by John Chagnon, Ambit Engineering, represented the applicants. Ms. Whitney described that the entire project is within the 100' Wetland Buffer, thus requiring Conservation Commission review (received on December 5, 2017) and Planning Board approval (hearing scheduled for December 20, 2017) .

There are two aspects of the project for which zoning relief is requested.

- 1) A 4' one-story addition to the garage over an existing concrete driveway located at the right front of the house.

Ms. Whitney reported that the property was subject to a 10' setback as indicated by the Building Inspector. The corner of the garage addition is 8.21' from the property line, 1.79' beyond the setback. Further, the subject property has an easement for use of the portion of the neighboring property at 21 Lavenger's Lane that abuts the property line, for the purpose of protecting a retaining wall located within the easement.

- 2) Change an existing detached deck located at the left rear of the house to reduce it by 4' to decrease the non-conformity, and roof and screen in the remaining 8' X 12" deck.

The resulting detached screen porch would extend to 9.09' from the property line.

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Chair Baker asked, and Ms. Whitney affirmed, that the zoning issues involve setbacks only, not volume.

In addition to the zoning relief, Ms. Whitney described the possible need for an Equitable Waiver for the non-conforming deck that was built absent a Building Permit, but noted that if the zoning relief is granted, the need for an Equitable Waiver is nullified.

Ms. Goldberg requested clarification about the 10' setback requirement indicated by the Building Inspector, vis a vis the current ordinance provision for 15'. Mr. Chagnon indicated that the property's 10' setback allowance resulted from the dimensional regulations in effect at the time of the subdivision and construction of the home, rather than its assignment to the Planned Development Zoning District. The property is located in the R-2 District.

Chair Baker read the Conservation Commission's December 5, 2017, Notice of Decision, into the record. The approval included walkway detail, native planting detail, and two process-focused stipulations.

Ms. Whitney addressed the five criteria for both variance requests.

1. The variances will not be contrary to the public interest:

The garage addition is built over a currently concrete area and with the easement, it doesn't impact the neighboring properties. The screen porch is hidden from public view except from the creek.

2. The spirit of the ordinance is observed:

They are modest increases and in locations that have minimum impact on the adjacent properties.

3. Substantial justice is done:

The garage addition will allow for needed space and that needed space offsets any minor hardship to abutting properties. The screen porch doesn't increase nonconformity, in fact by reducing the deck, the nonconformity will decrease-- but with a vertical expansion of the non-conforming structure.

4. The values of surrounding properties are not diminished:

The easement increases the buffer between the garage addition and the adjacent lot. The screen porch, a full level down on the left side, is mostly hidden from view. Ms. Whitney has had emails from neighbors indicating that they are in favor of the project.

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

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The special condition of the property is that the existing residence lies within the required right side setback and any expansion along that line would require a variance. That corner of the house, is at the 10' line so that any expansion forward would require a variance.

Chair Baker opened the Public Hearing at 7:22 p.m., and, hearing no comment, closed it at 7:23 p.m.

Board members characterized the requests as reasonable and de minimis, particularly as no neighbor objections were forthcoming. Mr. Gardner noted that the easement mitigates the request because the rights of the grantee become dominant while those of the grantor become subservient. Hearing no additional comment or concerns,

Mr. Fitzpatrick moved that, the 5 criteria being met in the Board's opinion, that the requests for variance be approved as submitted, subject to Planning Board approval. Mr. Lannon seconded the motion. Motion carried, unanimously.

Chair Baker will send the Notice of Decision to the Planning Board.

2. Approve October 24, 2017 and April 20, 2017 ZBA Meeting Minutes

Mr. Lannon motioned to approve the October and April meeting minutes as written. Mr. Gardner seconded. Motion carried unanimously.

3. Process Review

Chair Baker described a Select Board request for the Board to give more consideration to how applicants meet the five criteria for a variance and for greater recorded detail in the minutes and Notice of Decision. Ms. Sofio emphasized that the record is critical in cases in which variances are not granted, or might go to court.

Accordingly, Chair Baker proposed that Members review the *Procedural Basics for Planning and Zoning Boards* pamphlet, especially that section pertaining to hardship criteria.

Ms. Goldberg asked, and Chair Baker affirmed, that Continuing Education and funding are available. Members advocated for training in addition to their review of the procedures, especially to better understand the effect of recent New Hampshire Supreme Court court opinions.

Chair Baker proposed setting up a half hour session with the Board and the Town's attorney after Members have had a few months to review the procedures on their own.

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Ms. Goldberg asked, and Chair Baker provided clarification, about the role of a recused Member, stating that he or she may participate in the discussion as a member of the public, even by removing him or herself to the public seating area. If the Member chooses to remain at the table and hears no opposition to their presence there, he or she may ask questions, but not vote.

4. Adjourn

There being no further business, *Ms. Sofio motioned, and Mr. Fitzpatrick seconded, to adjourn. Motion carried, unanimously.*

Meeting adjourned at 7:34 p.m.

Respectfully submitted by,

Anne Miller, Secretary