

APPROVED

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**MINUTES OF THE NEW CASTLE ZONING BOARD OF ADJUSTMENT
Tuesday, April 17th, 2018 – 7:00 p.m. (Town Hall)**

Members Present: Todd Baker, Chair, Mark Gardner, Rebecca Goldberg, Ben Lannon, Margaret Sofio.

Members Absent: John Fitzpatrick.

Others Present: Derrick Hill, 300 Wentworth Rd.; Lorne Jones, 314 Wentworth Rd.; Attorney Keriann Roman.

Chair Baker called the meeting to order at 7:02 p.m. and asked attendees to sign in.

CASE #2018 - 02 filed by Lorne Jones, owner of 314 Wentworth Road, Map #5, Lot #5, requesting a variance from Article 4, Table 1 - Dimensional Regulations, in order to allow a deck and stairs within the 15 foot rear setback.

Mr. Jones has been living in New Castle for two years, and submitted Minor Building Permit Application #17-268 in October of 2017, in which he requested to build a 15 foot by 15 foot deck and stairs on his property at 314 Wentworth Road. The application was approved in November of 2017 by Town Building Inspector Don Graves. The deck was constructed that same month.

Upon seeing the completed deck, abutter Derrick Hill, of 300 Wentworth Road, raised concern that the property line separating the two lots was different than what markers on the property indicated. Upon further investigation, it was determined that Mr. Jones's deck and stairs were indeed built eight to ten feet within the 15 foot setback, thus prompting him to come before the Zoning Board seeking relief. While Mr. Hill had no objection to allowing the deck to remain in the location in which it was constructed, he expressed his desire to have a clear title for any future real estate transactions. According to Mr. Jones, the last survey done on the property was in 1986, prompting the Building Inspector to suggest using a civil engineering firm for future surveying on the lot.

Hearing no further comment, Chair Baker closed the Public Hearing at 7:10 p.m.

Discussion opened up amongst Board members about the proposal. Ms. Sofio asked if there was a possibility that the property value of neighbors would be diminished with the deck being within the rear setback. Mr. Hill stated that the proximity of the deck to his property line with Mr. Jones would not diminish the value of his property, and he reiterated his support of Mr. Jones's request. Mr. Jones added that Don Moore, a neighbor who has since passed, had a restrictive covenant in his deed prohibiting subdividing the lot any further.

While Mr. Gardner and Mr. Lannon both stated that they did not have any problem with the proposal, Ms. Sofio expressed concern about the finding of hardship. She was hesitant to approve the variance because of the potential of setting future precedents regarding the

requirement of unnecessary hardship. Ms. Sofio had done some research on zoning ordinances, and found RSA 67433-A, a “suitable waiver of dimensional requirements” that does not require a finding of hardship. It requires that the zoning violation not be discovered until after the structure was built, and that the construction not be done in bad faith or constitute a public nuisance. This RSA would be granted by the Town Zoning Board of Adjustment.

Chair Baker said that the purpose of the rear setback is not to crowd neighbors, and that the literal enforcement of the rear setback provision would, in this circumstance, cause unnecessary hardship. He felt that the proposed use of the deck in the backyard was reasonable. Mr. Lannon concurred.

Chair Baker stated that if the Building Inspector had advised differently regarding the original proposal to build the deck and stairs, the application would likely have been different. Furthermore, the case seeking zoning relief would be different if there was opposition from neighbors. Mr. Lannon agreed, and reiterated that if the deck had been constructed without getting the building permit first, that would likely be looked upon unfavorably by the Board.

Ms. Goldberg felt that the overall criteria for zoning relief have been met, but expressed some concern over setting any precedent for the neighborhood. She did not want to see this case used as an example in the future for others potentially seeking similar variances within the area in New Castle. Mr. Lannon, on the other hand, stated that there are not many properties within neighboring areas, and therefore setting a precedent for the particular part of the Island is not likely to be an issue in the future.

The ZBA considered the issue of zoning relief, and discussed the five criteria for zoning relief:

1. The values of surrounding properties are not diminished:

The proposed plan would increase the property's value as well as the surrounding properties.

2. Substantial justice is done:

The proposed plan will improve existing conditions, update to today's building standards and increase the value of the property and those around it.

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

The zoning restriction applied to the proposed plan will interfere with reasonable use of the existing property causing an unnecessary hardship.

4. The variance will not be contrary to the public interest:

The proposed plan will improve existing conditions and increase property values.

5. The spirit of the ordinance is observed:

The home was built when the setback requirements did not exist. The proposed plan will improve the existing situation while making no change or expansion to the existing property's footprint within the wetland setbacks.

Mr. Lannon moved that the applicant, Lorne Jones, has met the five criteria as listed in his application and moved to grant the variance as requested. Mr. Gardner seconded the motion. Ms. Sofio opposed on the grounds that a denial of the variance would not result in unnecessary hardship to the applicant. The motion passed by a vote of four to one.

2. Approve Minutes.

Chair Baker moved to accept the January 2018 minutes as submitted. Mr. Gardner seconded. The motion carried unanimously.

3. Adjournment.

There being no further business, Chair Baker moved to adjourn the public meeting. Mr. Gardner seconded. The motion carried, unanimously, and the meeting adjourned at 7:28 p.m.

Respectfully Submitted,

Meghan Rumph
Secretary