

1 **MINUTES OF THE NEW CASTLE ZONING BOARD OF ADJUSTMENT**

2 **Tuesday, May 19th, 2026 – 7:00 p.m. (Macomber Room)**

3
4 **Members Present:** Todd Baker, Chair; John Fitzpatrick; Rebecca Goldberg; Ben Lannon;
5 Alyson Tanguay; Matt Taylor; Marilyn Walker.

6
7 **Members Absent:** None.

8
9 **Others Present:** Jane Armstrong; Jason Bailey, TMS Architects; Eric Buck, Terrain Planning &
10 Design LLC; Corey Colwell, TF Moran, Inc.; Steve Cook; Karen Keating; Phil Llewellyn;
11 Andrew and Barbara Moore; Timothy Phoenix, Hoefle, Phoenix, Gormley & Roberts, PLLC;
12 Jamie Rosenfield; Scott Sprague, TMS Architects.

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14
15 Chair Baker called the meeting to order at 7:00 p.m. Voting members of the Board are Mr.
16 Fitzpatrick, Mr. Lannon, Ms. Goldberg, Ms. Tanguay, and Chair Baker. Mr. Taylor and Ms.
17 Walker are alternates.

18
19 **1. Case #2026-02: Applicant, Hoefle, Phoenix, Gormley & Roberts, PLLC on behalf of**
20 **James P. Rosenfield 1995 Trust, owners of 40 Ocean Street (Tax Map 13, Lot 18) has**
21 **requested a variance from Articles 4.2.1 Table 1C (setbacks) and II (lot coverage and**
22 **building area) and Article 7.3.1 (replacement) to allow demolition of the existing non-**
23 **conforming structures and reconstruction of a new septic system, home and garage with**
24 **ADU.**

25
26 Chair Baker stated that he has worked with Attorney Phoenix and civil engineer Corey Colwell
27 and is friends with the Applicants, but he can remain impartial in this hearing. Attorney Phoenix
28 introduced Applicants Jane Armstrong and Jamie Rosenfield, engineer Corey Colwell from TF
29 Moran, Jason Bailey and Scott Sprague from TMS Architects, and landscape architect Eric Buck
30 of Terrain Planning & Design.

31
32 Attorney Phoenix noted that the Town passed a vote at the annual meeting earlier this month in
33 which the portion of Ocean Street from Seabreeze Lane down to the water will be turned into a
34 trail with landscaping. The pavement will be removed from this section, and the area will be
35 turned natural for pedestrian access only. Attorney Phoenix felt that this would be a very good
36 thing for both the Town and for this property. The proposal was created and zoning relief
37 requested without taking into account the change in this portion of Ocean Street. A 441 square
38 foot portion of pavement is counted in the existing and proposed impervious surface calculations,
39 although it will be removed as part of the trail project. The Applicants have offered to assist with
40 the landscaping of the trail.

41
42 The existing house has seven bedrooms and seven bathrooms. It was built in the 1900s and is in
43 very poor condition that makes it unlivable. The roof is falling in and there is mold. There is a
44 detached garage that is on the western property line and walls that touch or go over the property
45 line. The fencing and grounds are in extremely poor condition. The lot is about 1/3 of the
46 required lot size in this zone. The current septic system is close to the resource and is antiquated,
47 though it did pass inspection right before the Applicants closed on the house. The property is

1 burdened by two front yard setbacks, the tidal buffer, and a paved access easement in the
2 northeast corner. The existing home and garage are nonconforming to setbacks, lot coverage, and
3 building area. The existing garage overhang is on the Seabreeze lot line and 2.5 feet from the
4 southerly lot line, and the house encroaches on the north and south setbacks. Existing lot
5 coverage is 29.2% where 20% is the maximum allowed, and building area is 4,975 square feet
6 where 4,189 square feet is the maximum allowed.

7
8 The proposal is to remove the existing home and detached garage and reconstruct a classical,
9 New England shingle-style home that has three bedrooms with a detached two car garage and
10 one bedroom, 860 square foot Accessory Dwelling Unit. The current garage has an apartment
11 where the prior owner's caretaker lived. The proposed garage will be the same size and in the
12 same location, but with improved front and side yard setbacks. Mr. Bailey noted that the
13 proposal will have unfinished attic space on the third floor, accessible by a pull-down ladder.

14
15 The Applicants are seeking relief for the setbacks, though Attorney Phoenix says they maintain
16 the claim that this relief should not be required because the setbacks will all remain the same or
17 will be improved from existing conditions. They went through several iterations of the house
18 design to keep the building area the same as what is there now. Attorney Phoenix believes the
19 proposal is more aesthetically pleasing than what exists now.

20
21 Ms. Armstrong mentioned that they had discussions with the Town about possibly tying into the
22 Fellows Court septic, but based on the price estimate the Town provided, they are looking at
23 more cost-effective options and have decided to install a private septic system. They are in the
24 process of digging test pits to see how much ledge there is.

25
26 Mr. Colwell spoke about how the proposal will greatly improve the 100-foot tidal buffer zone.
27 The septic system is currently 65 feet from the highest observable tide line, and the new system
28 will be about 80 feet. There is also currently lawn where the septic is, and the land slopes toward
29 the wetland. A lot of lawn will be removed with the proposal and replaced with native plantings,
30 which will be beneficial for the environment. There will be a reduction in the quantity of
31 stormwater and an increase in native plantings to treat the stormwater.

32
33 Mr. Bailey demonstrated the current versus proposed structure size to show that the massing of
34 the house will be similar. The grade plane will also be very similar, though the current house has
35 a walkout basement and the proposed house does not. Mr. Colwell confirmed that they are not
36 making significant grade changes and for the most part, the lot will be the same slope. Ms.
37 Tanguay asked about the elevation of the proposed pervious patio, which Mr. Colwell says is 17
38 to 19 feet, versus the top of the existing leach field, which Mr. Colwell says is 16 feet. Mr.
39 Colwell added that a Conditional Use Permit will be needed for impacts within the 100-foot tidal
40 buffer zone, and this will require input from the Conservation Commission.

41
42 Attorney Phoenix went through the five criteria for zoning relief.

- 43
44 1. *The variance will not be contrary to the public interest; and*
45 2. *The spirit of the ordinance is observed:*

46 The house will be completely code compliant, and the proposal brings many environmental
47 impacts, including a modern septic system that is further away from the resource, less grass and

1 more native plantings near the resource, and less impervious surface. The house is tastefully
2 designed and will preserve the character of New Castle. It will decrease lot coverage and
3 building area compared to existing conditions. Granting the variances will neither alter the
4 essential character of the neighborhood nor threaten the public health, safety, or welfare.
5

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

7 The new home will enhance the value of the property and those around it. The project will in no
8 way diminish the values of surrounding properties.
9

10 *4. Literal enforcement of the provisions of the ordinance would result in unnecessary*
11 *hardship:*

12 Special conditions exist that distinguish the property from others in the area. The lot is about one
13 third of the size of a compliant lot, is burdened by two front yard setbacks, an easement over the
14 northeasterly corner, and the tidal buffer setback. This results in a reduced building envelope
15 such that relief is needed to accommodate site improvements outside the tidal buffer. There is no
16 fair and substantial relationship between the general public purposes of the ordinance and its
17 specific application in this instance. There will be no overbulking, and the project will prioritize
18 outdoor living space and maintain ample light and space. The single-family home with an ADU
19 is permitted and is therefore reasonable.
20

21 *5. Substantial justice is done:*

22 There is no gain to the public from denying the variances and no harm to the public in granting
23 the variances. The project will reconstruct a permitted use, removing a dilapidated and
24 uninhabitable home and replacing it with a traditional, New England shingle-style coastal home.
25 Living space will be nestled within the roof line and the structure will be height compliant.
26

27 Ms. Tanguay asked about the number of proposed bedrooms, as the narrative indicated there
28 would be five bedrooms in the house, but the plans show three bedrooms in the house and one in
29 the ADU. Mr. Colwell said that the proposed septic system is designed to handle a five-bedroom
30 residential home, and they are overbuilding the septic system. The septic system will be an
31 advanced treatment system. The overall footprint of the leach field is being reduced, while
32 allowing for future capacity if the homeowners decide to convert one room into a bedroom. Mr.
33 Colwell stated that the lot will support this larger design.
34

35 Ms. Walker thought that under state law, what was on a lot before should not be a factor in
36 considering what is proposed. She asked if the Town has any concerns relative to the demolition
37 of the house. Chair Baker read from Section 7.3.1 in the New Castle Zoning Ordinance, and
38 summarized that if tearing down a nonconforming building, the replacement cannot be more
39 nonconforming.
40

41 Ms. Tanguay asked about the easement language, as it seems vague. She asked how the applicant
42 sees their responsibility I the area of the easement at the southeast corner of the lot, given that the
43 easement language states that the public and the Town have a right to pass and repass. Attorney
44 Phoenix noted that the language is “clear as mud” but said that the applicants understood that the
45 public and the Town would be able to continue to use the easement area consistent with how it is
46 accessed and used today. Ms. Armstrong commented that as owners, she and Mr. Rosenfield
47 have the right to landscape that area as they see fit.

1 Ms. Goldberg requested information about what sort of environmental assessments have been
2 done and what would be needed to get a Conditional Use Permit. Mr. Colwell explained that a
3 CUP is needed for work within the 100-foot tidal buffer, which will require going before the
4 Conservation Commission and then the Planning Board. A fully developed environmental impact
5 assessment will be prepared as part of the CUP. The septic system needs to be at least 75 feet
6 away from the wetlands, and requires a state permit. Mr. Buck added that there will be a much
7 more biodiverse planting schedule, as there is currently a monoculture of species. Invasive
8 species will be eliminated. All water runoff will be handled on the property. Mr. Taylor asked if
9 the applicants were considering putting in a revetment or seawall. Mr. Colwell said that they
10 were not.

11
12 Chair Baker opened the public hearing at 8:14 p.m. and read four letters received from the
13 public, all of which were in support of the proposal. Michael Mulroy, 4 Fellows Court, wrote that
14 the setback from Ocean Street would be virtually the same and would not impact his views.
15 Marsha Cutting, 79 Wentworth Road, felt that the project is thoughtful and respectful, and will
16 further beautify the area. Kathleen Hynes, 11 Seabreeze Lane, is the only direct abutter to the
17 applicants. She lives directly next door and wrote that she is thrilled to visualize the great
18 improvements to the property. She appreciated the open communication between the applicants
19 and abutters. Doreen Speer, 10 Fellows Court, also wrote in support of the application.

20
21 Steve Cook, 17 Seabreeze Lane, spoke in favor of the application. He felt that the existing house
22 is an eyesore and the proposal is beautiful. He and his wife are in complete support. Andrew and
23 Barbara Moore, 12 Walbach Street, voiced their strong support and felt that the proposal honors
24 tradition while transforming the area for the better. The landscaping that is proposed is going to
25 compliment what the Town has in mind for the Coast Guard property. They felt that it is very
26 important for the applicants to proceed in coordination with the Town projects in that area. Karen
27 Keating, 85 Wentworth Road, supports the project and appreciated the applicants' transparency.
28 Phil Llewellyn, 112 Wentworth Road, complimented the applicants for their efforts in
29 communicating plans with both direct and indirect neighbors. Hearing no further comments from
30 the public, Chair Baker closed the public hearing at 8:26 p.m.

31
32 Mr. Fitzpatrick felt that the applicants are an example of how to do things the right way, and
33 appreciated the communication with neighbors. He found that all five criteria for zoning relief
34 have been met, and the applicants have made every effort to reduce nonconformities.

35
36 Mr. Lannon agreed that it was helpful to have the support of neighbors. He believed that the
37 physical stature of the new home will appear much larger than what is currently there, but
38 appreciated the need for people to build houses in a modern capacity to fit their needs. He found
39 that the applicants have made an effort to stay within the boundaries of the existing building area
40 and to lessen nonconformities. Mr. Lannon felt that the requests for the spa and bulkhead in the
41 side yard setback were minimal relative to the overall application, and they won't have an impact
42 on the overall views of surrounding properties. He found hardship in the lot being on a corner
43 and with the potential removal of a portion of Ocean Street. Mr. Lannon stated that all criteria
44 have been satisfied and was overall in favor.

45
46 Ms. Goldberg appreciated how the applicants were transparent and open with their neighbors.
47 She supported the building of the main house, garage, and ADU, but was struggling with some

1 other elements of the design that fall within the buffer zone, specifically the spa. One of her
2 biggest concerns was the expansion in front of the house in the wetland buffer. She questioned
3 whether the development of the shoreline and impacts on visual perspective violate some
4 elements of the Master Plan. Ms. Goldberg did not feel comfortable granting the variances that
5 include the spa. She also wanted to see a minimization of the septic system so that it is not as
6 expansive and is more aligned with the actual number of bedrooms in the house and ADU. The
7 easement that the Town has over the northeastern corner of the lot is another significant issue at
8 play that Ms. Goldberg felt needs to be flushed out.

9
10 Ms. Tanguay echoed others' comments about the design process being very thoughtful and
11 collaborative. She is struggling to understand how the house will appear to the general public
12 coming from the beach, and worried about the house overbulking the area, particularly when she
13 looked at the overlays of the current versus proposed structures. The total overall building height
14 will effectively be about 50 feet from grade along the ocean side of the property. Ms. Tanguay
15 was thrilled that the applicants will be living there, but also wanted to take into account the
16 public interest in this very important corner lot. She noted that the proposed footprint appears to
17 match the existing structure that was built 100 years ago, but we are considering an application
18 in a very different climate era. She encouraged the Board to take resiliency into consideration
19 during its deliberations given the fragile nature of the site and the ever-increasing storm activity
20 that has ravaged the neighboring right-of-way (Ocean Street).

21
22 Ms. Tanguay was opposed to having a firepit so close to the 50-foot buffer. She commented that
23 at least half of the variance requests, notably for setbacks associated with the swim spa, the
24 gazebo, and the firepit, could have easily been eliminated with little effort to adjust the plan. She
25 worried about setting a precedent for approving items like these that have no hardship attached to
26 them. Mr. Lannon pointed out that the proposed house meets the building height requirement.

27
28 Mr. Taylor believed that this application would bring about significant discussions when it
29 comes before the Planning Board in terms of what will be allowed in the tidal buffer zone. While
30 he understood where Ms. Tanguay was coming from, he felt that many of her concerns fall
31 outside of the ZBA purview and will instead be topics for the Planning Board. Mr. Taylor
32 commented that New Castle has a restrictive zoning ordinance in terms of building area and
33 height.

34
35 Ms. Walker expressed concerns about the plans for the tidal buffer area, and requested that if the
36 ZBA decides to approve the application, they make a condition that any material change in the
37 design voids the ZBA's approval. She didn't see anything in the nature of the lot that would
38 require a larger house than what the zoning ordinances allow, and pointed out that the building
39 area is significantly over the allowable size, though she acknowledged that it will be no worse
40 than the existing conditions.

41
42 Ms. Goldberg and Ms. Tanguay had concerns about the wall and the six-foot fence proposed
43 along the eastern edge of the site. There were also discussions about whether the fence and wall
44 need to comply with setback requirements. The plan calls for the removal and replacement of a
45 stone retaining wall with a fence on top that runs along Ocean Street. The proposed wall will be
46 one foot off the property line, but four feet from the pavement. Mr. Colwell added that there will
47 be significant landscaping between the wall and the new trail. Ms. Goldberg was concerned that

1 the wall may potentially encroach on the right-of-way. Ms. Tanguay questioned why the planting
2 plan shows the fence extending into the easement area for which the Town and the public both
3 have access rights. Mr. Buck responded that this was a drafting error, and confirmed that the
4 proposed fence will end at the end of the stone retaining wall. The applicants also confirmed that
5 the wall and fence will not extend into the paved right-of-way area that is to become part of the
6 new trail on Ocean Street.

7
8 Ms. Tanguay noted that the Town has not committed to any plan or approved any design in the
9 Ocean Street right-of-way, so she felt that it is premature to decide about the fence and stone
10 wall in that location. Mr. Rosenfield said that the Select Board had already approved the design
11 as presented at the annual Town meeting in May. The plan shown at the annual meeting was
12 created by the applicants' landscape architect at the applicants' request. According to Ms.
13 Tanguay, in conversations with Select Board Chair Bill Stewart, as recently as this morning, the
14 only thing that the Town has committed to or approved is to downgrade the end of Ocean Street
15 from a Road to a Trail in order to unlock FEMA funds for repair work in that area.

16
17 Attorney Phoenix said that he would recommend moving the stone wall 18" further back. Mr.
18 Taylor pointed out that no variance is needed for a fence or wall that is at least 18" off the
19 property line. Mr. Colwell explained that the existing wall height goes up to six feet for privacy
20 purposes, and the applicants want to maintain privacy. Mr. Buck confirmed that the stone wall
21 will be no taller than 36", plus the fence on top. The total height will not exceed six feet. Ms.
22 Tanguay was concerned that the wall location is being shifted to go along the property line, but
23 nobody knows what Ocean Street will look like when it is converted to a trail. Chair Baker asked
24 if the applicants would accept an approval that continued the decision on the zero-lot line stone
25 wall and fence at the eastern edge of the lot until the Board has clarity on the design intended for
26 that location. Ms. Armstrong declined, as she did not want to prolong the process any further by
27 having to return to the ZBA.

28
29 Chair Baker acknowledged the strong support from all neighbors. He did not have an issue with
30 the possible encroachment onto Ocean Street, and pointed out that the applicants have the
31 overwhelming support of neighbors who will see the home the most. The proposed wall will not
32 be bigger than the current wall and will look better. While he didn't believe there was a
33 justifiable hardship for having the spa within the 15-foot side yard setback, he felt that it was a
34 de minimus request. Chair Baker found that all five criteria for zoning relief have been met.

35
36 Mr. Lannon motioned to approve the application of Applicant, Hoefle, Phoenix, Gormley &
37 Roberts, PLLC on behalf of James P. Rosenfield 1995 Trust, owners of 40 Ocean Street (Tax
38 Map 13, Lot 18) as submitted, having met the five criteria for zoning relief from Articles 4.2.1
39 Table 1C (setbacks) and 1I (lot coverage and building area) and Article 7.3.1 (replacement) for
40 the reasons articulated in Attorney Phoenix's memo. This approval includes the landscaping
41 schedule of Terrain Planning & Design LLC revised April 27, 2026. This approval is conditioned
42 upon the following: no material changes be made to the plan; the proposed stone wall would not
43 exceed three feet in height and the total fence and wall will not exceed six feet in height; and that
44 the applicants receive approval of all local, state, and federal permits as may be required. Mr.
45 Fitzpatrick seconded. Ms. Goldberg proposed an amendment to deny the variance requests for
46 the pergola, spa and retaining wall in the setbacks. Ms. Tanguay supported this amendment,
47 noting that we need to allow time for due public input and design processes with regard to the

1 trail at the end of Ocean Street given the consequential proposal and change to the area. Mr.
2 Lannon rejected this proposed amendment, as he felt that it was micromanaging the client. Mr.
3 Lannon's motion carried by a vote of three to two, with Chair Baker, Mr. Lannon, and Mr.
4 Fitzpatrick in favor, and Ms. Goldberg and Ms. Tanguay opposed.
5
6

7 **2. Approve Minutes.**
8

9 Mr. Taylor moved to approve the March 17, 2026 minutes as written. Ms. Goldberg seconded.
10 The motion carried unanimously.
11
12

13 **3. Set Date of Next Meeting.**
14

15 Chair Baker announced that the next Zoning Board of Adjustment meeting will be on Tuesday,
16 June 23, 2026 at 7:00 p.m. at the Macomber Room.
17
18

19 **4. Adjournment.**
20

21 There being no further business, Mr. Lannon moved to adjourn the public meeting. Mr.
22 Fitzpatrick seconded. The motion carried, unanimously, and the meeting adjourned at 10:05 p.m.
23

24 Respectfully Submitted,
25
26

27 Meghan Rumph
28 *Secretary*