

APPROVED

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MINUTES OF THE NEW CASTLE PLANNING BOARD
Wednesday, February 28th, 2024 – 7:00 p.m. (Macomber Room)

Public Hearing on a proposed amendment to Zoning Ordinance 6.8.2, Requirements for Fences and Walls, to add language to address fences placed on property lines.

Public Hearing on adding a definition in our Zoning Ordinance for Short Term Rentals and codifying the prohibition of Short-Term Rentals in all districts in New Castle.

Public Hearing on eliminating the definition of Grade in our Zoning Ordinance and clarifying the language in Section 2.2.32, Height Definition, and Section 4.2 Table 1, Density and Dimensional Regulations.

Public Hearing on the revised Master Plan before a Planning Board vote on acceptance.

Members Present: Darcy Horgan, Chair; Nancy Euchner; Bill Stewart.

Members Absent: Anne Crotty; Lorne Jones; Rich Landry; Kate Murray.

Others Present: Randy Bryan; Larry and Beth Cutliffe; Larry Doyle; Jane Finn; Darel and Barbara Fletcher; Terri Golter; Jay Lamareau; Jerry Marvin; David McArdle; Dave McGuckin; Iain Moodie; Joan Nickell; Doug Palardy; Timothy Phoenix, Hoefle, Phoenix, Gormley & Roberts, P.A.; Jeff and Rebecca Reilly; Leonard Seagren; David Severance; Tom Smith; Guy and Pam Stearns; Hank Stebbins; Nancy Vailas; Sara Varela.

Chair Horgan called the meeting to order at 7:00 p.m. Noting a quorum, Chair Horgan indicated that the voting members are herself, Nancy Euchner, and Bill Stewart. Chair Horgan explained that the public hearings this evening are to hear the public opinion on the proposed changes to the zoning ordinances. At the end of the public hearing, the Planning Board will discuss amongst themselves and will determine whether to move the proposed amendment to a warrant article to be voted on by the public by paper ballot at the annual Town meeting in May. The Master Plan does not require a vote at the Town meeting, and only requires Planning Board approval. Any significant change made to the proposed amendments will require another public hearing, which would be at the March Planning Board meeting.

1. Public Hearing on a proposed amendment to Zoning Ordinance 6.8.2, Requirements for Fences and Walls, to add language to address fences placed on property lines as depicted below:

(~~Strike through~~ means deleted text, **bolded text means added text**):

6.8.2 Requirements for Fences and Walls:

1. *Fences and walls must not be detrimental to the character of the surrounding neighborhood.*
2. *Fences and walls may not obstruct sight distances at driveway intersections or otherwise create unsafe conditions.*
3. *Fences and free-standing walls greater than six (6) feet in height shall not be permitted even by Special Exception if an abutter objects to the increased height.*
4. ***Fences and walls may be placed on the property line but must be agreed on by both neighbors, in writing, which is recorded at the Registry of Deeds and runs with the properties. Maintenance stipulations must be made part of the written agreement.***
5. ***Fences and walls not placed on the property line in compliance with subsection 6.8.2.4., must be placed at least 18” from a surveyed property line.***

Chair Horgan explained that this amendment would allow for fences and walls to be within 18 inches of the property line with agreement in writing from both property owners. All other fences and walls would need to be at least 18 inches from the property line. Chair Horgan stated that one can replace an existing fence in-kind, but if changing its location, for example, this amendment would apply.

Chair Horgan opened the public hearing at 7:08 p.m. David McArdle, 74 Main Street, asked for an example of the proposed 18 inches. Mr. Stewart explained that if a resident builds a new fence, if there is no agreement with the abutting neighbor, the resident must leave at least 18 inches from the property line to allow a buffer to maintain the fence. Mr. McArdle asked why this change is being proposed. Chair Horgan responded that the Building Inspector requested this because from his experience with other towns, he has seen many issues of conflicts with neighbors and wanted to get ahead of this issue in New Castle. Mr. McArdle did not understand why the Town needs to get involved, and felt that this type of dispute should be resolved between neighbors. He was concerned that this would become burdensome for homeowners and would require surveying and attorney fees that would be costly. Chair Horgan noted that this amendment is an addition to the regulations that already exist.

Jeff Reilly, 70 Main Street, felt that these additional rules would put somebody in a position to enforce these rules, and it will create more friction than what it is trying to prevent. He believed that new fences need to be treated differently than existing fences. Overall, he was concerned that this amendment will be burdensome for property owners.

David Severance, 24 Elm Court, stated that this amendment may result in unpacking very old deeds that reference places that no longer exist, such as stonewalls, which could be problematic.

Iain Moodie, 62 Portsmouth Avenue, noted that there is a regulation in place already requiring

that if a resident has no survey, that person must install the fence at least three feet from where the expected lot line is. He felt that this amendment would solve a lot of problems before they arise, not only for current property owners but for future owners, and is an improvement.

Attorney Tim Phoenix commented on the wording of the amendment, and suggested clarifying in the proposed number 4 that fences and walls may be placed *within 18 inches* of the property line.

Randy Bryan, 34 Wentworth Road, felt that this amendment is a good idea if neighbors cannot agree on the fence location. He agreed with the wording change proposed by Attorney Phoenix.

Nancy Vailas, 212 Wentworth Road, asked what constitutes a fence and if it has to be a built structure. She also wondered who determines whether a fence or wall is detrimental to the character of the neighborhood. Chair Horgan responded that a fence must be a built structure and this application comes before the Building Inspector, not a Board.

Tom Smith, 254 Wentworth Road, wondered if a fence has been on a property line for many years, was removed over time and the owner now wants to put it back, is this regarded as a pre-existing condition. Attorney Phoenix stated that most ordinances say that any non-conforming structure, if not put back within a certain period of time, will be considered a new structure and therefore subject to the current ordinances. In the New Castle Zoning Ordinance Section 7.4.1, any non-conforming structure that is discontinued or destroyed may be resumed or restored to its former non-conforming status within two years.

Terri Golter, 17 Locke Road, felt that if there is an agreement between neighbors, it should not be necessary to put it on record. She asked if new property owners would have to comply with the prior agreement if it is recorded on the deed. Chair Horgan responded that the agreement would run with the property. Ms. Golter does not believe that the agreement should run with the property.

Hearing no further comments from the public, Chair Horgan closed the public hearing at 7:44 p.m. Mr. Stewart summarized that the concerns expressed by the public were about the cost of surveys and attorney fees, and how this could be onerous to owners. There were also concerns about existing fences and small lots. He felt that constructing a new fence would be more onerous with the proposed amendment, but to some extent, the Building Inspector is already requiring survey work anyways. Mr. Stewart agreed that the wording in number 4 of the proposed amendment should be revised to add “within 18 inches”. Chair Horgan was aware of many neighborhood disputes in New Castle and felt that this amendment could possibly prevent further discord between neighbors. Ms. Euchner noted that some things need to be clarified, such as who decides what is the same fence. Chair Horgan responded that this would be a fence of the same height and in the same location, but not necessarily the same material.

Chair Horgan motioned to table the discussion on Zoning Ordinance amendment 6.8.2 until the next Planning Board meeting to be held on March 27, 2024 at 7:00 p.m. in the Macomber Room. This will be posted at least 10 days in advance of the public hearing. Mr. Stewart seconded. Motion carried unanimously by a vote of three to zero.

2. Public Hearing on adding a definition in our Zoning Ordinance for Short Term Rentals and codifying the prohibition of Short Term Rentals in all districts in New Castle as depicted below:

(~~Strike through~~ means deleted text, **bolded text means added text**):

2.3.65 Short Term Rental: The rental, for a fee, of any dwelling, dwelling unit, residential living unit, accessory dwelling unit, or portion thereof, for occupancy of less than 30 consecutive days.

4.1.2 Residential District (R-1):

Prohibited Uses

6. *Short Term Rentals*

4.1.5 Planned Development District (R-4):

Prohibited Uses

2. *Short Term Rentals*

4.1.6 Mixed Use District (MU):

Prohibited Uses

5. *Short Term Rentals*

Chair Horgan explained that this amendment will codify existing restrictions and add Short Term Rental to the Definitions Section at Section 2.3.65, renumber the current definitions 65 to 81 accordingly, and add “Short Term Rentals” as a prohibited use in all districts.

Chair Horgan provided background to the proposal. The Planning Board discussed short-term rentals last month, as this has come up in Town and it has become necessary to address the topic. Board members expressed concern about short-term rentals changing the fabric and rhythm of the community. The Board determined that the Zoning Ordinance must clearly state that short-term rentals are not allowed in New Castle. This proposed amendment is codifying what is already on the books.

Chair Horgan opened the public hearing at 8:08 p.m. David Severance acknowledged that the Planning Board has put a lot of thought into the topic. He requested that the conversation at the January 24 meeting surrounding Section 4.1.1 be included in the minutes. According to Mr. Severance, short-term rental must be defined and then used in statute in order to be sufficiently considered as a prohibited use.

Sara Varela, 258 Wentworth Road, asked for clarification about what the proposed amendment

would accomplish. Chair Horgan responded that the Board is bringing to a Town vote whether to have the definition of a short-term rental in the ordinances, and as part of that same warrant article, short-term rentals would be considered a prohibited use in all districts. Ms. Varela felt that this should be split into two separate warrant articles, first to define a short-term rental and its duration, and second whether to prohibit short-term rentals. She believed that blending the two together would create a lot of confusion. Mr. Stewart commented that in his opinion, these are not two different questions, and they should be considered together in one warrant article.

Tom Smith stated that proposed Section 2.3.65 makes clear the definition of a short-term rental. He cited three examples of Airbnbs in New Castle and the great inconvenience they created for neighbors. Mr. Smith added that residents are entitled to peace and quiet, and short-term rentals would seriously disrupt this.

Jeff Reilly shared that he has an Airbnb in Kittery, and in his experience, complaints of noise or parties are extremely unlikely. He believed that the Town should give short-term rentals a chance. Mr. Reilly commented that people seem to have fear and uncertainty about the idea of allowing short-term rentals, and the Town should perhaps entertain a compromise. He added that renting out a home that is one's primary residence is not considered to be a business or commercial use.

Darel Fletcher, 90 Wild Rose Lane, pointed out that the Wentworth Hotel is similar to a giant Airbnb, and it has been a non-issue for the most part. Barbara Fletcher asked for clarification about the purpose of this public hearing. Chair Horgan responded that this is asking the Town to approve a definition of short-term rentals and approve that this is a prohibited use.

Guy Stearns, 22 Lavengers Lane, stated that he owns a lake property and the property taxes on it have doubled. Without renting the property, they could not afford to keep it. He felt that a week is a reasonable duration for a short-term rental, whereas a month is too long. Mr. Stearns commented that people in town may need to supplement their income and should be able to rent out their homes for a week at a time.

Iain Moodie commented that short-term rentals for a week in duration is considered transient and therefore a business, whereas a 30 day rental is considered residential use. A short-term rental is a commercial use for a residential space. His understanding is that at this time, a resident could ask the ZBA for a variance to allow a short-term rental. Mr. Moodie was a proponent of clarifying that a short-term rental is less than 30 days, because someone who stays more than a month would be considered a resident. He spoke of negative experiences he had and how Airbnbs destroyed the neighborhood where he used to live in Portsmouth.

Rebecca Reilly, 70 Main Street, felt that under 30 days is the standard definition for a short-term rental. Having a sweeping restriction of short-term rentals, when this could be managed through existing ordinances, would prevent someone such as a traveling nurse from staying here when that person would not be a nuisance to the town.

Doug Palardy, 33 Walbach Street, stated that the proposed amendment is confusing for the voter. He supported landowners' rights and would vote for short-term rentals to be allowed, as this

would benefit people on a fixed income. He noted that as the owner of the Great Island Inn, the vast majority of stays are for three days or less, so he did not anticipate having a maximum duration of 30 days being an issue.

Hearing no further comments from the public, Chair Horgan closed the public hearing at 8:49 p.m. Chair Horgan reiterated that the Town already does not allow short-term rentals, and this proposal is simply making this explicitly clear while also providing a definition for short-term rental. She was in favor of the definition being included, but it should be referenced elsewhere in the ordinance.

Mr. Stewart was comfortable with codifying what is already in practice, but he understands that some residents would like the Board to consider whether the Town should allow short-term rentals. Chair Horgan wondered whether the Board should do a town-wide mailing to explain the warrant article's purpose and its impact if passed. Mr. Stewart stated that he was fine with either looking at the proposal again as a Board, or holding another public hearing on the subject.

Ms. Euchner felt that it is important to define in the Zoning Ordinance what is meant by a short-term rental. She pointed out how difficult and complicated it is to put together an ordinance that would allow for short term rentals. The Board must consider the period of duration for a short-term rental, who would enforce the rules, and how would it be regulated. Ms. Euchner asked what the avenue would be for people who want to allow short-term rentals. Chair Horgan responded that the voters can codify the ban of short-term rentals this year. Then next year, if it is realized that residents are in favor of allowing them in town, the ordinance can be amended so that short-term rentals are allowed. That change would then be placed on the ballot as a warrant article for a vote by all voters.

Chair Horgan motioned to table the discussion on Zoning Ordinance amendment 2.3.65 and related items until the next Planning Board meeting to be held on March 27, 2024 at 7:00 p.m. in the Macomber Room. Mr. Stewart seconded. Motion carried unanimously by a vote of three to zero.

3. Public Hearing on eliminating the definition of Grade in our Zoning Ordinance and clarifying the language in Section 2.2.32, Height Definition, and Section 4.2 Table 1, Density and Dimensional Regulations as depicted below:

~~(Strike through means deleted text, bolded text means added text):~~

2.0 Definitions

2.3 Definitions

2.3.28 ~~Grade: With reference to a building or structure, means the average elevation of the ground adjoining the building or structure on the lowest side. When the ground slopes away from the exterior walls, the grade shall be established by the lowest points within the area between the building and the lot line or, when the lot line is more than six (6) feet from the building, between the building and a point six feet from the building.~~

2.3.32 *Height: As applied to a building, means the vertical distance measured from the building line at the lowest **grade point** on any side, to the highest point of the roof, excluding chimneys and similar projections that are usually appurtenant to the building.*

4.2 *Density and Dimensional Regulations*

Table 1: Density and Dimensional Regulations, New Castle, N.H.

*F Max. Building Height 2 ½ Stories above grade, not to exceed 32 ft. **measured from the lowest point of the building.***

Chair Horgan stated that this amendment will clarify existing language, eliminate a definition no longer relevant regarding the word “grade”, and renumber definitions #28 through #81. The amendment will change the definition of height to be measured from the lowest point rather than the lowest grade. This has been confusing for residents because grade cannot be the lowest point on any side as per 2.3.32 and also the average elevation as per 2.3.28. The intent of the ordinance as it was written was to measure height from the lowest point as opposed to the average.

Chair Horgan added that residents do not like larger structures being constructed in town and maxing out lots. The feeling in town is that people want to maintain the small-town feel and the appearance of historic structures, so the proposal is to use the lowest point as opposed to the average when calculating height.

Chair Horgan opened the public hearing at 9:12 p.m. Iain Moodie was in favor of the proposed amendment, as he felt that it needed clarification and will protect the character of the town. He noted that the amendment will simplify calculations without reducing the allowable ridge height. Mr. Moodie added that the grade is looking at the existing elevation of the lot, and he believed that this measurement should be on the survey when constructing a new house.

Randy Bryan wondered if the word “point” is sufficient and clear, or if it would be necessary to define this as well. Mr. Moodie responded that the lowest point on any side of a building is very clear.

Attorney Tim Phoenix spoke on behalf of the Englanders at 76 Beach Hill Road. The Englanders plan to raze and replace their home, but this proposed change would ruin all of their work because it will change how height is measured. This is not fair to homeowners who live on a sloping lot. For homes with a walkout basement, such as the Englanders’, the proposed ordinance would really limit homeowners to having a cape-style house, which is unfair. Attorney Phoenix stated that the way the ordinance is currently written, height is measured by the average of the grade on the lowest side of a building. Building Inspector Bookholz has been interpreting this correctly, and Attorney Phoenix felt that a change does not need to be made because the definition is clear as it is. He added that almost every ordinance he deals with in other towns measures height from the average grade all around a building. New Castle’s existing ordinance is one of the strictest he has seen for height. While he understands the intention of wanting to reduce the bulking out of lots, he noted that the Town already has building area in its ordinance, which is not in many other towns’ ordinances from his experience. Attorney Phoenix suggested that the definition of grade should be changed to grade plane, which would be the average.

David Severance noted that the ordinance historically allowed for a height of 38 feet, which has since been reduced to 32 feet. He felt that the ordinance already has ways of limiting vertical facades, such as capping out maximum building height at 2.5 stories above grade. Mr. Severance agreed with revising grade to grade plane. With the proposed change, he wondered how this would affect decks that extend far out off a home.

Hearing no further comments from the public, Chair Horgan closed the public hearing at 9:32 p.m. Mr. Stewart was comfortable with the existing ordinance using the average on the lowest side because it takes into account variations with homes that have a walkout basement. Ms. Euchner felt that measuring by grade plane makes more sense, and using the average as opposed to the lowest point is a better solution. She wondered if this amendment would end up being a solution looking for a problem if the ordinance is already being interpreted correctly by the Building Inspector. Chair Horgan stated that the contradictory language needs to be changed and what is on the books needs to be cleaned up. She felt that this will change how height is measured, and acknowledged that the Building Inspector is already averaging grades when calculating height. Overall, Chair Horgan was concerned with massing on small lots.

Chair Horgan motioned to NOT advance Zoning Ordinance amendment 2.3.28 and related items to a warrant article at the Town meeting in May 2024. Mr. Stewart seconded. Motion carried unanimously by a vote of three to zero.

4. Public Hearing on the revised Master Plan before a Planning Board vote on acceptance.

Chair Horgan opened the public hearing at 9:43 p.m. Jane Finn, 169 Portsmouth Avenue, recommended deleting “The town has approved architectural plans in place for upgrading the Town Hall, including renovating the second floor and installing an elevator to make it fully accessible” on page 10 under Future Condition/Vision, as she did not recall this ever being approved.

Dave McGuckin, 141 Cranfield Street, proposed adding “plus Route 1B low spots in Rye” to item number 5 on page 6 Recommendations, so that it will read “Advocate to the state about the importance of the New Castle/Rye Bridge repair project and the elevation of the Rt. 1B causeway plus Route 1B low spots in Rye in their identified priority projects.” Mr. McGuckin pointed out a typo on page 11, where it should read Ocean Street instead of Ocean Road. He asked whether it was accurate that over 3,000 cars pass through Town per day, as stated on page 12. Lastly, on page 19, Mr. McGuckin questioned the footnotes and what they are referring to. He wondered if they should be referenced on page 4 in the Executive Summary.

Tom Smith commented that this is an extraordinary revision to the Master Plan, and believed it is the best version that the Town has ever had. Hank Stebbins, 24 Ducks Head, agreed and commended the people who have worked on this.

Chair Horgan stated that the Board will hold a new public hearing to approve the Master Plan because of the changes proposed to the wording and some additional photos.

Hearing no further comments from the public, Chair Horgan closed the public hearing at 9:56 p.m.

5. Approve minutes to the January 24, 2024 meeting of the Planning Board.

Ms. Euchner moved to approve the minutes as written for the Planning Board meeting on January 24, 2024. Mr. Stewart seconded. Motion carried unanimously.

6. Old Business.

None.

7. New Business.

The next Planning Board meeting will be held on Wednesday, March 27, 2024 at 7:00 p.m. the Macomber Room.

8. Adjourn.

There being no further business, Mr. Stewart moved to adjourn the meeting. Ms. Euchner seconded. The motion carried, unanimously, and the meeting adjourned at 10:03 p.m.

Respectfully Submitted,

Meghan Rumph
Recording Secretary