

1 **APPROVED APPROVED APPROVED APPROVED APPROVED**

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3 **MINUTES OF THE NEW CASTLE PLANNING BOARD**

4 **Wednesday, January 24th, 2024 – 7:00 p.m. (Town Hall)**

5
6 **Public Hearing for a Conditional Use Permit for applicants Luis A. Rivas and Valeria L.**
7 **Rienzi, 35 Grist Mill Lane, Tax Map 11, Lot 23, for work within the 100 foot tidal buffer**
8 **and within 50 feet of a Class B wetland buffer for expansion of an existing home and deck**
9 **and conversion of a portion of the existing impervious driveway to pervious. ZO 9.2.5.1. A**
10 **second Conditional Use Permit requested for an attached Accessory Dwelling Unit. ZO 6.6.**

11
12 **Members Present:** Darcy Horgan, Chair; Nancy Euchner; Lorne Jones; Rich Landry; Bill
13 Stewart.

14
15 **Members Absent:** Anne Crotty; Kate Murray.

16
17 **Others Present:** Charles Hoyt, Charles Hoyt Designs; Marc Jacobs; Scott Pettis; Timothy
18 Phoenix, Hoefle, Phoenix, Gormley & Roberts, P.A.; Valeria Rienzi; Luis Rivas; Keriann
19 Roman, Town Counsel; Alex Ross, Ross Engineering, LLC; David Severance; Janet Sylvester.

20
21
22 Chair Horgan called the meeting to order at 7:00 p.m. Noting a quorum, Chair Horgan indicated
23 that the voting members are herself, Nancy Euchner, Rich Landry, and Lorne Jones.

24
25 **1. Public Hearing for a Conditional Use Permit for applicants Luis A. Rivas and Valeria L.**
26 **Rienzi, 35 Grist Mill Lane, Tax Map 11, Lot 23, for work within the 100 foot tidal buffer**
27 **and within 50 feet of a Class B wetland buffer for expansion of an existing home and deck**
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30
31 Chair Horgan confirmed with Attorney Tim Phoenix that the applicants wished to proceed with
32 four of five voting members present. Attorney Phoenix presented with engineer Alex Ross of
33 Ross Engineering, LLC and architect Charles Hoyt of Charles Hoyt Designs. The applicants
34 went before the ZBA seeking height relief and building area relief last fall. The ZBA denied the
35 application, so the owners worked with Mr. Hoyt to re-design the home to eliminate the need for
36 any variances. A conditional use permit has always been needed due to the lot's proximity to the
37 tidal buffer and wetland. Attorney Phoenix has met with Building Inspector Russ Bookholz and
38 confirmed that the applicants no longer require any variances.

39
40 Mr. Ross explained how the latest plans have added a permeable walkway from the garage to the
41 front porch. He also included a stormwater management plan showing how the stormwater will
42 be managed on the site. This is consistent with the recommendations outlined in the
43 Conservation Commission's letter of recommendation dated December 5, 2023. The stormwater
44 plan will be submitted to the State to get the necessary shoreland and wetland permits. Mr. Ross
45 went over the Commission's recommendations that: 1) the newly installed pervious pavement is
46 developed with a plan for ongoing maintenance; 2) the gutter installed on the second story of the
47 rear of the house lead to a stone infiltration bed, the size of which corresponds to the area of the

1 deck above; 3) the drip edge be built at a depth of 18 to 24 inches to handle water runoff; and 4)
2 buffer plantings of native material be installed between the rock wall and the rear of the house
3 along the length of the rear lot line and extending five feet in front of the rock wall. All
4 recommendations have been incorporated in the latest application.

5
6 Mr. Ross demonstrated how the rear of the parcel heads south toward the water. The house
7 currently has a walkout basement with a gravel area and triangular shaped deck in the rear. There
8 is an existing long driveway coming from Grist Mill Lane toward the garage. Above the garage
9 is an existing living unit that pre-dated the ADU ordinance. The elevation slopes from Grist Mill
10 down to the water. A small portion of the lot is in the flood zone at elevation 8, but the majority
11 is not in the flood zone. The 250 foot setback is on the other side of Grist Mill Lane, so any work
12 on the subject site requires a State Shoreland Permit.

13
14 The applicants are proposing to have a new garage off the front with a small, roofed entry way to
15 the front door. The rear deck would have an extension off the triangular shape. The existing deck
16 is 254 square feet but is not very functional due to the odd angles. The proposed deck would be
17 599 square feet, and would be kept outside of the 50 foot wetland setback. A large area of asphalt
18 in front of the garage would be replaced with pervious pavers. As a result, the lot coverage
19 would decrease from 23.7% to 18.3%. Marc Jacobs, certified wetland scientist, delineated the
20 wetlands. Mr. Ross has been in contact with Eben Lewis at NHDES, and since no work will
21 occur within the 50 foot buffer, this would be a simple permit and meets Town regulations. Mr.
22 Ross felt that the wetland buffer will have a much higher level of protection than it currently
23 does.

24
25 Mr. Hoyt spoke about the layout of the proposed home. Mr. Hoyt met with Mr. Bookholz and
26 stated that he did not have a problem with a renovated or new ADU for the house, as long as it
27 met all town and state requirements and is code compliant. The proposed ADU is attached and
28 above the garage. It has its own entryway and sufficient parking. The owner will be living in the
29 house. The ADU will be 624 square feet, which is less than a third of the living unit. It will have
30 adequate septic facilities. The owners will acquire an occupancy permit. The appearance will
31 remain that of a single-family dwelling.

32
33 The house will be a reproduction cape colonial style that will be in keeping with the style of
34 other houses in the neighborhood. The foundation will be redone with a crawl space added to
35 contain the necessary mechanicals and electricals. A 63 square foot front porch will be added to
36 give a period look and add architectural interest. Mr. Hoyt showed depictions of the elevations,
37 where the proposed massing will be smaller in the rear elevation. A height variance is no longer
38 needed, as the existing ridge height will be maintained. The left side of the home will have shed
39 dormers to maximize living space on the second floor. The total building area will be 5,099
40 square feet, where the maximum allowed is 5,148 square feet and existing is 3,700 square feet.
41 Attorney Phoenix clarified that this is building area according to the Town ordinance, which is
42 larger than the actual living area.

43
44 Attorney Phoenix stated that there will be a significant decrease in impervious surface, and the
45 overall height of the house has been lowered so no dimensional relief will be needed. The
46 applicants own Grist Mill Lane, so theoretically they could include that in the lot calculations,
47 according to Attorney Phoenix. Because the existing driveway, home, deck, and gravel patio are

1 located entirely within the 100 foot buffer, there is no way to renovate and expand portions of the
2 home without undertaking activity within the wetland buffer. However, with the stormwater
3 management plan, the effect on the buffer and wetland will be improved because there will be
4 less water sheeting. Best management practices will be followed.

5
6 Attorney Phoenix noted that the existing ADU is an accessory apartment, but because they could
7 not find any record of it being approved in the past, they are requesting an ADU to be safe and
8 ensure it is compliant. New Hampshire strongly supports ADUs throughout the state. Attorney
9 Phoenix went over the criteria and how the ADU meets all requirements. The applicants do not
10 intend to have the ADU be a rental, and it will only be one bedroom. The owners intend to
11 occupy the principal dwelling. The ADU will be 624 square feet, which is well below the
12 maximum allowed size of 1,200 square feet.

13
14 Mr. Landry asked if the applicants are aware of the operational reality of pervious pavers. Mr.
15 Rivas confirmed that they are aware of the maintenance plan and will follow that. Chair Horgan
16 emphasized that the size of the proposed house is allowed because the applicants are using
17 pervious pavers. The pavers will not continue to be permeable if they are not maintained.
18 Attorney Phoenix noted that in approving the Conditional Use Permits, the plans become binding
19 upon the owner, and the owner will be required to maintain the pavers. Mr. Stewart asked why
20 the whole driveway will not be pervious pavers. Mr. Ross responded that it is a significant
21 expense, and it would not be ideal to have pavers at points where a car would be doing a lot of
22 turning.

23
24 Chair Horgan opened the public hearing at 7:51 p.m. and read a letter in support of the project
25 from Etoile Holzaepfel, 29 Laurel Lane. Ms. Holzaepfel wrote that the proposed dwelling is
26 attractive and enhances surrounding properties, and she felt that the changes made by the
27 applicants meet the spirit of the ordinance. Scott Pettis, 25 Grist Mill Lane, liked the house
28 design. He asked about the underground utilities. Mr. Ross stated that they have reached out to
29 Portsmouth and New Castle to get a good map of what utilities are currently there. They would
30 then determine their age and if any new updates would be needed. He pointed out that the work
31 will not impact anything, as the applicants will use the existing lines. Mr. Pettis asked whether
32 the two large oak trees will remain. Mr. Ross and Mr. Rivas both confirmed that the trees will
33 remain. Janet Sylvester, 25 Grist Mill Lane, spoke in full support of the applicants.

34
35 Hearing no further comments from the public, Chair Horgan closed the public hearing at 7:55
36 p.m. Chair Horgan appreciated the efforts made to minimize impacts in the 100 foot buffer and
37 to not encroach on the 50 foot buffer. She felt that the changes were generally positive,
38 particularly with the amount of impervious material being removed. Chair Horgan reminded the
39 applicants to not fertilize, and emphasized that they are stewards of the waterfront. Chair Horgan
40 asked Marc Jacobs, certified wetland scientist, whether there was a wetlands analysis report he
41 had. Mr. Jacobs responded that he identified the highest observable tide line and freshwater
42 wetlands. He had not done a delineation report, but will be preparing a coastal function
43 assessment for the NHDES shoreland and wetland permits.

44
45 *Mr. Landry motioned to approve the application for Applicants Luis A. Rivas and Valeria L.*
46 *Rienzi, 35 Grist Mill Lane, Tax Map 11, Lot 23, for a Conditional Use Permit for work within*
47 *the 100 foot tidal buffer and within 50 feet of a Class B wetland buffer, as presented in the Ross*

1 *Engineering plans dated January 19, 2024. This approval is conditioned upon the following: 1)*
2 *approval of all state and federal permits. Approval is based on the Applicant having met all*
3 *criteria for a Conditional Use Permit as stipulated in the New Castle Zoning Ordinance Section*
4 *9.2.5.1. Mr. Jones seconded. Motion carried unanimously by a vote of four to zero.*

5
6 *Mr. Landry motioned to approve the application for Applicants Luis A. Rivas and Valeria L.*
7 *Rienzi, 35 Grist Mill Lane, Tax Map 11, Lot 23, for a Conditional Use Permit for construction of*
8 *an attached Accessory Dwelling Unit, as presented in the Charles Hoyt Designs plans dated*
9 *January 2, 2024. Approval is based on the Applicant having met all criteria for a Conditional*
10 *Use Permit for an Accessory Dwelling Unit as stipulated in the New Castle Zoning Ordinance*
11 *Section 6.6.5. Mr. Jones seconded. Motion carried unanimously by a vote of four to zero.*

12 13 14 **2. Continue discussion on short-term rentals.**

15
16 Chair Horgan stated that Mr. Bookholz has brought the issue of short-term rentals to her
17 attention again, as there are residents who are asking for a definition of a short-term rental. She
18 felt that this issue needs to be tackled so the Board can get ahead of it. The current Ordinance
19 prohibits short-term rentals, but there is no specific definition in the Zoning Ordinance.

20
21 Town Counsel Keri Roman presented samples of regulations on short-term rentals that other
22 towns in New Hampshire, particularly in Strafford and Rockingham counties, have adopted.
23 Attorney Roman explained that towns are currently allowed to regulate short-term rentals either
24 through putting it in the Town Zoning Ordinance, or putting it as a permit registration license
25 process through the Building Inspector. The permit process involves a fee, which is typically
26 \$100. Attorney Roman recommended that if the town wishes to permit short-term rentals, a
27 permit application should be utilized in addition to adding language to the Ordinance. This way,
28 abutters would be notified as well. She shared that Freedom, NH has the most robust way of
29 looking at short-term rentals. In that town, the unit must be re-registered with a new application
30 fee paid every two years. The building inspector and fire chief inspect the unit every two years as
31 part of the permitting process. Freedom has a conditional use permit application in addition to
32 the permit requirement.

33
34 Attorney Roman pointed out that some towns, such as Bedford, prohibit short-term rentals
35 outright. If the town wishes to allow short-term rentals in some zones, the Ordinance must define
36 which zones. Then, there must be a process for how it will work. Typically, a short-term rental is
37 less than 30 days. The Select Board could adopt a licensing component with the Building
38 Inspector. Towns tend to limit short-term rentals to a total of 90 days per year. The State
39 regulates short-term rentals once they exceed 185 days per year. A short-term rental becomes
40 subject to NH meals and rooms tax if it is rented for more than six consecutive months. Short-
41 term rentals are considered a residential use and not a commercial use. A short-term rental can
42 be considered an accessory use to the primary residence.

43
44 Chair Horgan noted that the Master Plan survey seemed to indicate that New Castle residents
45 were amenable to short-term rentals, but they want regulations on them. Mr. Landry felt that it
46 makes sense to have every short-term rental come before the Planning Board for a conditional
47 use permit even before registering with the Town because it is being used in a commercial

1 fashion. He likened it to a site plan review before the Planning Board.

2
3 Members discussed having hosted versus unhosted rentals. A hosted rental must be owner
4 occupied. Members agreed that investors should be prevented from buying homes in town for the
5 purpose of renting them out all the time. Mr. Jones mentioned the issue of short-term rentals
6 changing the fabric of the community. He felt it benefits the renter, but at the expense of the rest
7 of the community.

8
9 The PB members followed with a robust discussion on the potential negative impact of short-
10 term rentals on a neighborhood and a community. The PB members were hesitant to make a
11 major decision on this topic without further input from the residents.

12
13 Attorney Roman stated that the minimum the Board could do is to define short-term rentals and
14 where they are allowed, if at all. The Board could classify short-term rentals as a prohibited use,
15 which would unequivocally ban them. She will write a definition for a short-term rental being 30
16 days or less, and would propose a warrant article that would amend the Zoning Ordinance to add
17 short-term rentals as a prohibited use. Mr. Stewart clarified that this is codifying what the Town
18 policy already is.

19
20 The PB decided for this year's Town Meeting vote to codify the restrictions on Short-Term
21 Rentals and see how the citizens vote on the issue. The Public Hearing on the topic and the
22 Town vote will give important input on how citizens feel about Short-Term Rentals in New
23 Castle.

24
25 **3. Approve minutes to the January 3, 2024 meeting of the Planning Board.**

26
27 *Mr. Landry moved to approve the minutes as written for the Planning Board meeting on January*
28 *3, 2024. Ms. Euchner seconded. Motion carried unanimously.*

29
30 **4. Old Business.**

31
32 None.

33
34 **5. New Business.**

35
36 Chair Horgan discussed a proposed change to the fence ordinance. Mr. Bookholz would like to
37 add that fences placed on a property line must have a written agreement between neighbors and
38 be recorded on the deed, and there must be a maintenance agreement. If there is no written
39 agreement between neighbors, the fence must be at least 18 inches off the property line. Chair
40 Horgan will write up proposed wording for changes to our existing fence ordinance for a vote at
41 next month's meeting.

42
43 The next Planning Board meeting will be held on Wednesday, February 28, 2024 at 7:00 p.m. in
44 the Macomber Room.

1 **6. Adjourn.**

2
3 There being no further business, Mr. Landry moved to adjourn the meeting. Mr. Stewart
4 seconded. The motion carried, unanimously, and the meeting adjourned at 9:45 p.m.

5
6 Respectfully Submitted,

7
8
9 Meghan Rumph
10 *Recording Secretary*