

# Approved Approved Approved

Planning Board Meeting  
7:00 p.m. Town Hall  
Wednesday, September 28, 2017

**Members Present:** Darcy Horgan, Geof Potter, Rich Landry, Margaret Sofio, Bill Stewart, Tom Hammer

**Others Present:** none

**Members Absent:** Kate Murray

Chair Darcy Horgan called the meeting to order at 7:03 p.m. and noted the presence of a quorum with voting members: Chair Horgan, Ms. Margaret Sofio, Mr. Rich Landry, Mr. Bill Stewart, Mr. Tom Hammer.

## 1. Review and approve minutes of the meeting on August 23, 2017

*Chair Horgan MOVED, and Ms. Sofio SECONDED, to APPROVE the minutes of the AUGUST 23, 2017 meeting as AMENDED.*

## 2. Ordinance, violations, and enforcement

Chair Horgan asked that the Board consider taking on a number of issues related to potential ordinance changes as well as a review of violations and enforcement procedures, including the issue of tree cutting that has prompted negative public reaction. Chair Horgan also asked that Members, when approached, help de-escalate innuendo with a reasonable explanation of the Planning Board's limitations and a reminder of property owner's rights.

Chair Horgan distributed the list of issues that have accrued over the year and suggested that the Board prioritize their concerns. A Board member will take the lead on each of the priority issues in order to research, incorporate feedback, and keep the issue on track for presentation at May Town Meeting in May, 2018, if appropriate. Public Hearings will need to take place between February and March in order to air proposed ordinance revisions. The lead member should plan to report on the issue's status at each consequent meeting.

### Personal Wireless Service Overlay District

Lead Member: Ms. Sofio

Having initially investigated the Personal Wireless Service Overlay District ordinance issue months ago, Ms. Sofio has recently been in touch with a representative of the FCC to confirm that her information is up to date. Wireless Overlay Districts are regulated by federal law but the town needs to be in conformity. Regulations will apply to locating wireless equipment on public and private land. Much of the town land is off limits for personal wireless equipment siting based on its historical character or environmental sensitivity, however, co-location with the existing wireless equipment in the church's bell tower is essentially allowed by right.

1 One red flag is that the filing process is short -- only 45 days from initial application to approval,  
2 inclusive of any corrections or revisions to the application. Absent action from the town within  
3 the 45 day window, the application is deemed to be approved. Ms. Sofio noted that the Board  
4 may want to consider a process to establish an early warning and quick turnaround for wireless  
5 applications to guard against inadvertent approval due to lack of prompt action.

6  
7 Next Steps: Ms. Sofio will look at Personal Wireless Service Overlay District ordinances in other  
8 NH towns and may consult with the Rockingham Planning Commission to write a draft  
9 ordinance.

#### 10 Tree Cutting

11 Lead member: tbd (Chair Horgan will only initiate activity)

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13  
14 Members of the Conservation Commission support the creation of a Tree Cutting Committee,  
15 advisory to the Planning Board, to identify limitations to and opportunities for the town's  
16 authority to affect the cutting of trees on public and private lands to best align with the will of the  
17 town. Mr. Stewart asked, and Chair Horgan responded, that the committee's work would likely  
18 be subject to the NH Right to Know Law. Chair Horgan will call and chair the initial meeting to  
19 present the information that she's accumulated but will cede the position to a new chair as  
20 selected by the committee.

21  
22 Hearing no objections to the plan for a Tree Cutting Committee, Chair Horgan will move  
23 forward.

24  
25 Ms. Sofio recalled that during the public comment period of the August Planning Board meeting,  
26 Ms. Ann McAndrews expressed concern about trees becoming too overgrown and suggested  
27 that the committee membership also be inclusive of that viewpoint.

28  
29 Next Steps: Chair Horgan will recruit members and organize a meeting. First meeting attendees  
30 will select a chair, study the information, and research opportunities to revise the ordinance.

#### 31 Violation Enforcement and Penalties

32 Lead Member: Mr. Landry

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34  
35 Mr. Landry described that he, as a Planning Board representative, has been pulled into two  
36 controversial issues related to construction projects in his neighborhood.

37  
38 1. An Abigale Lane resident initiated a 800-900 sf addition to their home, that prompted a  
39 neighbor to question its allowance. Mr. Landry found that:

- 40 ● The Building Permit was incorrectly issued as a minor permit, rather than major permit  
41 (for projects over 399 sf).  
42 *The owner has since sought and received the appropriate permit.*
- 43 ● The project was approved with a 2 slope roof, where the town building code requires a 4  
44 slope minimum.  
45 *The Building Inspector has since corrected this with the applicant.*
- 46 ● The town's Building Code Ordinance- Duties of Building Official (arguably) does not  
47 require any review for zoning compliance.
- 48 ● The permit application requires an applicant to certify only that they are *familiar* with the  
49 dimensional regulations and the New Castle Table of Uses.

1 *Mr. Landry suggested that the permit language be strengthened to require the applicant*  
2 *to acknowledge that if a violation is identified at any time between the issuance of the*  
3 *permit and the completion of the project, corrective action could be required.*  
4

5 2. An abutter to the building site at 350 Wentworth Road questioned the location of a fence  
6 installed along the property line that encloses the entire property and interrupts deer trails. Mr.  
7 Landry found that:

- 8 • Trees were removed and the land altered throughout the 50' to 150' wetlands setback  
9 area, likely in violation of the New Castle Zoning Ordinance 9.2.8, Woodlands Buffer.  
10 The extensive planting plan that was filed by the developer doesn't abate the violation.  
11 *Mr. Stewart noted that the town did not communicate the Woodlands Buffer requirement*  
12 *to the applicant during conversations about the project.*  
13

14 Mr. Hammer indicated that the Woodlands Buffer Zone regulations will affect an upcoming  
15 project at the former Cutting property on Wentworth Road where, because the lot exceeds ½  
16 acre, 50% of the area must remain in its unaltered state. Chair Horgan described that the  
17 property owner has been cooperative and the Conservation Commission has been active at the  
18 site. They have developed a detailed existing conditions map in preparation for the site work.  
19

20 Conservation Commission Chair, Lynn McCarthy, is often active behind the scenes, advocating  
21 for conservation measures even when they are not required of the property-owner.  
22

23 The concern is that the Building Inspector does not see Wetland Buffer Zone enforcement as  
24 his job. Mr. Landry noted that in many towns where the building inspection and zoning  
25 enforcement jobs are combined, the job title is Zoning Officer. Currently, with two part time  
26 Building Inspectors, Mr. Stewart noted that it is difficult to respond on-the-spot to reports of  
27 violations.  
28

29 Mr. Hammer suggested that an applicant be required to submit a tree diagram along with  
30 building plans as a standard requirement for a permit.  
31

32 Mr. Stewart described the difficulty of enforcement by example of a recent project that started as  
33 a wooded building lot located within the Woodlands Buffer Zone. The trees were identified and  
34 tagged to either be removed or remain, but upon completion of the project, there were six fewer  
35 trees than required. The owner was required to plant the missing trees but questions arose  
36 about size of the trees, timeline to replant, location of replanting, and how the remedial action  
37 was to be enforced. Other common problems arise when an owner claims that a tree is dead or  
38 may fall on their house. Chair Horgan noted that some towns require certification from an  
39 arborist before a tree can be removed.  
40

41 The only enforcement option currently available to New Castle is the Certificate of Occupancy  
42 (CO). In a prior discussion with the Building Inspector, members recall that he didn't believe he  
43 could withhold a CO if the codes are met. Mr. Landry proposed amending the Building Inspector  
44 ordinance to add the responsibility to review building projects for zoning violations and, if one  
45 exists, to withhold the CO. This amendment could pair with notice to the applicant, in bold, on  
46 the building permit, added to the existing Certification of Compliance, for at least the major  
47 building permits. Enforcement requires the will of the town as well as a designated authority.  
48

49 Mr. Stewart described that with the finite resources, the two part time Building Inspectors can't  
50 provide full time vigilance, nor can they afford the time to enforce anything beyond the building  
51 code. He hasn't seen evidence that the majority of the residents would support an increase in

1 these enforcement resources. Roughly, the cost of a full time replacement (about \$110,000)  
2 would exceed the current \$30,000 cost of the part time inspectors. Chair Horgan asked whether  
3 the Building Inspector could, at minimum, be required to alert the Planning Board to permit  
4 applications.

5  
6 Mr. Landry believes the best solution would be to place the onus on the applicant to comply with  
7 the zoning ordinance or face consequences. Mr. Stewart suggested educating vendors about  
8 the town's ordinance and creating and promoting an informed vendor list. Chair Horgan  
9 suggested adding a requirement for a tree cutting permit. Mr. Hammer suggested requiring  
10 contractors to obtain a town license in order to work in town.

11  
12 Mr. Landry summarized the process he proposes. First, ensure that applicants understand their  
13 obligation to be aware of the zoning regulations, and later, if an applicant is noticed for a  
14 violation, provide a process for recovery from the violation.

15  
16 In one instance the Conservation Commission has negotiated a settlement with a property  
17 owner who was thought to be in violation of the zoning ordinance, despite the Commission's  
18 advisory-only role. Ms. Sofio proposed that the ordinance could be amended to allow the  
19 Building Inspector (or ZBA or Select Board) to enforce requirements established by the  
20 Conservation Commission.

21  
22 Chair Horgan suggested the Board or Conservation Committee communicate directly by letter  
23 with purchasers of wetlands-abutting property to advise them of the zoning requirements.

24  
25 Next steps: Mr. Landry will draft proposed revisions to the Building Permit for the Board's review  
26 next month as well as look at the current system for fining violators and recommend changes.

#### 27 28 Lot Coverage Change to Add Impervious Surfaces

29 Lead Member: Chair Horgan

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31 In addition to reviewing the possibility of changing the lot coverage calculation to add impervious  
32 surfaces, including driveways, this umbrella issue will include the review of definitions for  
33 *pervious surface* and *impervious surface* proposed by the Conservation Commission with the  
34 intent to amend the ordinance to include these definitions.

#### 35 36 Driveway Ordinance

37 Lead Member: Mr. Hammer

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39 Two recent projects on Piscataqua Street highlighted the lack of driveway regulations in the  
40 ordinance.

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42 Next Steps: Mr. Hammer will review existing materials in Chair Horgan's file to initiate and  
43 inform the discussion about whether driveway-specific regulations are recommended.

#### 44 45 B&B and Inn Ordinance

46 Lead Member: Mr. Potter

47  
48 Review the ordinance for potential, necessary language specific to inns. Look at adding a  
49 parking calculation independent of that used for hotels. Identify any other area in which inns and  
50 B&B's might require their own regulations.

51

1 Members questioned the origin of the two lined parking spots in front of the Great Island Inn. Mr.  
2 Stewart indicated that the spots are public property and not sanctioned parking spaces.

3  
4 Fences and Retaining Walls

5 Lead Member: Mr. Potter

6  
7 Consider changing the definition of structure to *not exclude* retaining wall and fences, and the  
8 implications of such a change. Mr. Landry noted that while he has seen retaining walls defined  
9 as structures, he has not seen fences so defined. Chair Horgan noted that the fence as a  
10 wildlife barrier, was at issue at 350 Wentworth Road. They might also be a concern if erected in  
11 wetlands.

12  
13 Chair Horgan asked, and members agreed, not to add a definition for “lot area” as cited in Table  
14 1, p. z-19 of the Zoning Ordinance.

15  
16 The Board decided to hold off on developing AirBnB/VRBO ordinances until the state issues its  
17 guidelines.

18  
19 The Board did not assign two additional topics:

- 20 ● Prohibited uses on an empty, unbuilt lot (garage, boat storage, mobile home, trailer)
- 21 ● Prohibited use of jet skis in Lavenger’s Creek

22  
23 Chair Horgan noted the October meeting date of October 25, 2017 and heard no conflicts.

24  
25 **3. Adjourn**

26 Mr. Stewart *MOVED*, and Chair Horgan *SECONDED*, to adjourn the meeting.

27  
28 Meeting adjourned at 8:53 p.m.

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30 Respectfully Submitted,

31  
32 Anne Miller, Secretary