

*******FINAL*******

**Planning Board Meeting
7:00 p.m. New Castle Town Hall
Wednesday, May 22, 2019**

Public Hearing for a Conditional Use Permit for Thomas and Kathleen Shippee, 152 Portsmouth Avenue, Map 16, Lot 8 & 9 for construction of a single family residence a portion of which is proposed inside the 100' tidal land buffer.

Public Hearing for a Conditional Use Permit for Robert M. & Cynthia Durkee, 51A Laurel Lane, Map 11, Lot 26 for site improvements to an existing home including a porous paver driveway, a porous bluestone walkway, and steps to a proposed docking structure.

Members Present: Darcy Horgan, Kate Murray, Rich Landry, Tom Hammer, Margaret Sofio

Others Present: John Chagnon, Ambit Engineering, Steve Ricker, Ambit Engineering, Tom Shippee, 171 Pickpocket Road, Brentwood, Donna Urbanek and Paul Urbanek, 49 Laurel Lane

Members Absent: Lorne Jones, Bill Stewart

Chair Darcy Horgan opened the meeting at 7:04 p.m. and indicated the presence of a quorum and identified the meeting's voting members as those five present.

1. Public Hearing for a Conditional Use Permit for Thomas and Kathleen Shippee, 152 Portsmouth Avenue, Map 16, Lot 8 & 9 for construction of a single family residence a portion of which is proposed inside the 100' tidal land buffer.

Mr. John Chagnon, representing applicants Thomas and Kathleen Shippee, identified reference documents: a May 22, 2019 letter of recommendation from the New Castle Conservation Commission (NCCC), plant list and budget prepared by Woodburn and Company Landscape Architecture, LLC, and plan set for the Shippee property indicating the 100' and 50' Tidal Buffer Zones (TBZs) and limit of disturbance relative to the Highest Observable Tide Line (HOTL) reference line.

Fill to raise the grade, a patio, and a subsurface infiltration system are planned between the 50' and 100' TBZ boundaries, however the planned house is set back, out of the 100' TBZ.

The core of the proposed house is an existing historic (c. 1733) house which will be moved to the building site, with new wings to be constructed to match the style, as well as an outbuilding

for storage. Subsequently, the applicant's plans will be subject to a Public Hearing of the New Castle Historic District Commission (NCHDC).

The proposed driveway— a narrowed drive flanked by drivable grass surface — accesses the lot from Portsmouth Avenue, then turns right toward the proposed garage. A section between the garage and driveway will be porous pavement to keep the impervious surface ratio under the allowable threshold of 20% for the total lot.

The stormwater treatment design on the west side of the lot includes: a rain garden to the south side of the subject lot to account for future construction of up to 20% impervious surfaces on Lot 1 to treat and infiltrate the first flush water that flows downhill from Portsmouth Avenue toward the river, and a drain culvert to allow water to flow under the driveway and exit at a new retaining wall to an existing riprap swale where it will safely discharge.

On the eastside, where neighbors had indicated concerns during the December 26, 2018 Public Hearing for the lot's subdivision that stormwater runoff currently runs straight to the river, plans are to channel runoff via a diverter on the existing driveway to a swale then into a level spreader, before being directed to a buffer planted area.

A rain garden will handle runoff directed by gutter system and pipe from the street-side of the structure. Runoff from the water-side will be collected and directed to a Storm-Tech plastic domed water storage infiltration device. The drainage analysis, submitted with the package, includes an inspection and maintenance plan that prescribes that the Storm-Tech overflow be inspected twice a year during regular rain to ensure water is exiting the system.

Overall, the proposed runoff plans are expected to reduce the 100 year peak runoff from 12.55 to 11.57 cubic feet per second (cfs).

Chair Horgan asked, and Mr. Chagnon and Mr. Shippee answered, that the need for such an extensive drainage plan is because the proposed building occupies nearly the entire width of the property. It is necessary to provide for drainage needs for future development of Lot 1. The foundation will be standard code concrete with a stone veneer.

The site will require considerable fill, but the specific amount hasn't been calculated.

Chair Horgan commended the effort to keep the main structure outside of the 100' setback and indicated that the NCCC's recommendation was unanimous. Responding to the NCCC proposed conditions for a performance bond for landscaping and permission for NCCC members to return in two years after release of the bond to evaluate the landscape plan, the applicant indicated his consent and provided a cost estimate of landscape costs, \$17,882.50.

In minimizing the impact and providing for runoff treatment so that the river will not be impacted by development, Mr. Chagnon believes the proposed plans meet the criteria for the petitioned Conditional Use Permit.

Mr. Rich Landry described the process for bond administration and release that was previously discussed by the Planning Board. Once the work is done, the applicant is to notify the Building Inspector or a designee who will inspect the work to verify that it complies. The bond is then released by vote of the Planning Board.

Chair Horgan asked for clarification about the proposed granite steps. Mr. Chagnon described their inclusion as a waterfront property owner's right to have a pathway to the water. Their coverage was included in the impervious surface calculation.

A New Hampshire Department of Environmental Services (NHDES) DES Wetland Permit for work in the 100' TBZ as well as a Shoreline Permit — which is a numbers based assessment for impervious surface coverage —for work between the 100' TBZ and 250' shoreline setback are pending.

At 7:39 p.m., Chair Horgan opened the Public Hearing for comment, and, hearing none, closed the hearing at 7:40 p.m.

Mr. Hammer made a MOTION to approve the Conditional Use Permit application dated April 29, 2019, for 152 Portsmouth Avenue, Tax Map 16, Lot 9 per the plan set submittal dated April 19, 2019 for applicant Thomas Shippee, subject to the following conditions per [New Castle Town Ordinance section] 9.2.5 Part 2, i:

1. A performance bond in the amount of \$18,000 will be posted to assure the landscape plan is executed as diagrammed in the plans.

2. The owner will enter into a site access agreement to allow the New Castle Conservation Committee members to return within two years after the completion of the landscaping to evaluate the landscape plan.

Ms. Murray SECONDED the motion. Motion CARRIED unanimously.

2. Public Hearing for a Conditional Use Permit for Robert M. & Cynthia Durkee, 51A Laurel Lane, Map 11, Lot 26 for site improvements to an existing home including a porous paver driveway, a porous bluestone walkway, and steps to a proposed docking structure.

The subject property is bounded by the Piscataqua back channel to the south and Laurel Lane to the north. Mr. Steve Riker, representing applicants, Robert and Cynthia Durkee, referenced plan set sheet C-2 and described the proposed site improvements for which a Conditional Use

Permit for work within the 100' TBZ is being sought: an existing gravel driveway to be converted to a porous paver drive; an existing area between the driveway and front entry to be converted to porous bluestone; and, in anticipation of approval of a titled docking structure, for which the applicant has separately applied to NHDES, a 4' X 10' set of wooden stairs to access the elevation of the proposed fixed pier. The dock, which was not presented for the Planning Board approval, was detailed in the plan set. With these improvements, impervious surfaces decrease from 33.5% to 23.8% of the lot area to reduce runoff and the quality of the water that enters the channel.

Applicants' NHDES Wetland applications copies were distributed to members. Mr. Riker described two separate applications, one of which is for the driveway and walkway, which meets minimum expedited criteria and can be approved in 30 days. The dock application is a Major Impact application and requires a 90-day approval period, 30-day appeal period, and final approval from the Governor's Council.

Dock details include permanent structures of a fixed pier and accessway to the dock, and seasonal components of a gangway and float, which are to be removed in the winter.

Chair Horgan affirmed that the Planning Board's jurisdiction vis a vis the applicant's plans is limited to the driveway, walkway and wooden steps accessway; it does not include the dock. Additionally, the application will require ZBA approval for relief from the frontage requirement for a dock. Planning Board approval was sequenced prior to the ZBA because the need for a variance was not noticed until after the Planning Board hearing was scheduled. Dock construction may be hindered by a negative outcome from the ZBA or problems with NHDES compliance. Therefore if the wooden steps accessway was to receive Planning Board approval, but the dock was not subsequently approved, then the purpose for the accessway would be null. The Planning Board approval of the accessway could be conditioned on approval of the dock.

Members discussed whether Town Ordinance Section 6.3.1 which states that "... seasonal docks shall be permitted by Special Exception" granted by the ZBA. Chair Horgan noted that that section of town ordinance has now been superseded by the state.

Mr. Chagnon added that the Building Inspector asked for deed information to determine whether the creation of the lot predated the state rule. Mr. Landry explained that any conditions that are granted as part of the approval of a subdivision supersede the ordinance.

Ms. Kate Murray indicated that she wasn't comfortable approving the wooden steps prior to approval of the dock, at which time she would want to see final design plans for the steps and dock connection. Chair Horgan explained that were the Planning Board to hold off approval of the steps and the dock to receive approval, the applicants would need to return to the Planning Board despite their right to access the dock. The Planning Board could approve the steps per the current plan set and pending all other approvals for the dock. Any changes to the plans would require a new Planning Board hearing.

Chair Horgan read the NCCC letter of recommended approval of the driveway, walkway, steps and dock structure, dated May 22, 2019, with a recommendation to plant “a swath 2’ to 3’ wide with native shrubs above the stone wall on either side of the accessway to the dock extending to the property lines” and the single condition that NCCC members be permitted to return to the site two years after completion to evaluate the improvements. The NCCC’s recommended approval of the dock is irrelevant to the Planning Board, but is a requirement of NHDES. Their choice to omit a planting plan requirement or bond was based on the limited size and was a function of the plantings being suggested rather than conditioned.

Responding to Ms. Murray’s question about the specifics of the porous bluestone, Mr. Riker presented a revised plan set, dated May 22, 2019 that described a 1.5” joint space filled with # 9 aggregate between the bluestones, to allow for the percolation of water.

Responding to the NCCC request, the same revised plan set added Note 12, “per the New Castle Conservation Commission, a 2’ to 3’ wide buffer planting shall be installed above the stone wall along the shoreline on the property.”

Chair Horgan opened the Public Hearing at 8:25 p.m.

Mr. Paul and Ms. Donna Urbanek, abutters at 49 Laurel Lane, strongly opposed the inclusion of the steps in the Planning Board decision suggesting that it would represent one more step toward permission to build a dock that they oppose and that is disallowed unless a) the abutters approve it (which they will not), b) the state provides an exemption to their rules, and c) that a ZBA variance is granted. Mr. Urbanek disagrees with combining the dock-related approvals with the other shore-based approvals and asked that the Board take their protestations, as abutters, into consideration. He didn’t believe that a follow-up meeting in the event of all other dock approvals would pose a significant burden on the applicants, and indicated that he and Ms. Urbanek would prefer the imposition of attending another Board meeting over the incremental progress toward the dock that the Board’s conditional approval might signify.

Ms. Urbanek added that the dock would negatively impact them by its location in front of their property and that the ZBA might read a Planning Board approval of the wooden steps as the Board’s assent to the entire dock structure.

Members asked, and Mr. and Ms. Urbanek clarified, that the Urbanek’s opposition was confined only to the accessway wooden steps, not the pavers.

Ms. Murray preferred to be cautious and hold off on approval of the accessway steps until and if the dock is approved. Ms. Margaret Sofio, who also serves as a member of the ZBA, preferred not to weigh in on that portion of the proposal so that she would not be seen as having made her decision.

Mr. Hammer asked what the value and significance would be were the Planning Board to approve the wooden steps when the abutters have indicated that they have the right and the intention to prevent construction of the dock.

Mr. Riker described an NHDES process that permits an applicant who cannot comply with one of their rules to submit a waiver. The Durkees will be submitting a waiver for the 20' setback rule, which excludes dock construction within a 20' setback of the property lines extended, and exists for navigation purposes. With the neighboring dock sited 80' distant from the proposed dock, their application will make the case that the water will remain navigable. Success of the waiver depends on the NHDES assessment of the applicant's argument and not the neighbor's approval.

Ms. Urbanek addressed the setback argument noting that the Urbanek's property has 160' of shoreline frontage, and, showing via an illustration, that 80% of the proposed dock would be located within the setback and that a docked boat would be in front of their house. Chair Horgan kept a copy of the illustration for the file.

Mr. Chagnon summarized that there is a fundamental right of waterfront property owners to access the water, including wharfing and installing docks, going back to colonial times. While New Hampshire uses the system of property line extended, others use boundaries running perpendicular to the channel to apportion the "real estate".

Mr. Hammer indicated that he would not support approval of the stairs at the current time because he would not want to imply through the Planning Board's decision that if the dock is approved, there are no more hurdles.

Chair Horgan added her agreement to hold off the approval of the wooden steps.

Hearing no additional public comment, Chair Horgan closed Public Hearing at 8:48 p.m.

Mr. Landry made a MOTION to approve the application for a Conditional Use Permit for applicants, Robert M. & Cynthia Durkee, 51A Laurel Lane, Map 11, Lot 26, for site improvements to an existing home including a porous paver driveway, a porous bluestone walkway, and associated landscaping per Ambit Engineering Plan C-2 (NHDES Permit Plan) dated May 22, 2019.

Note: The Planning Board took no action on steps to a proposed docking structure shown on previous plan sets for this project.

Ms. Sofio SECONDED the motion.

Motion CARRIED unanimously.

3. Review and approve minutes to the meeting on April 24, 2019

Chair Horgan MOVED to approve the April 24, 2019 minutes of the Planning Board as amended. Ms. Murray SECONDED the motion and it CARRIED unanimously.

3. New Business

Chair Horgan asked, and Mr. Landry agreed, to draft a procedure for the administration and release of surety bonds but to refrain from a preliminary draft motion.

4. Adjourn

Ms. Sofio MOTIONED to adjourn. Ms. Murray SECONDED. Motion was APPROVED by unanimous vote.

The meeting adjourned at 9:02 p.m.

Respectfully submitted by,

Anne Miller, Secretary

Attachment: May 22, 2019 NCCC Notice of Decision RE: 152 Portsmouth Avenue