

1 **MINUTES OF THE NEW CASTLE PLANNING BOARD**
2 **Wednesday, September 23rd, 2020 – 7:00 p.m. (Recreation Building)**
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5 **Public Hearing for a lot line adjustment for applicants Cynthia and Robert Durkee and**
6 **Baker Family Trust of 2016, 51A and 51B Laurel Lane, Map 11, Lots 26 and 27.**
7

8 **Members Present:** Darcy Horgan, Chair, Lorne Jones, Rich Landry, Kate Murray, Margaret
9 Sofio, Bill Stewart.
10

11 **Members Absent:** Tom Hammer.
12

13 **Others Present:** John Chagnon, Ambit Engineering; Mary Ann and Tim Driscoll; Robert
14 Durkee; Jeremy Eggleton, Orr & Reno; Mary and Brooks Kennedy; Steve Riker, Ambit
15 Engineering; Donna, Melissa, and Paul Urbanek.
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18 Chair Horgan called the meeting to order at 7:00 p.m. Noting a quorum, Chair Horgan indicated
19 that the voting members are herself, Ms. Murray, Ms. Sofio, Mr. Stewart, and Mr. Landry. Mr.
20 Jones is an alternate.
21

22 **1. Public Hearing for a lot line adjustment for applicants Cynthia and Robert Durkee and**
23 **Baker Family Trust of 2016, 51A and 51B Laurel Lane, Map 11, Lots 26 and 27.**
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25 John Chagnon and Steve Riker of Ambit Engineering were present with Applicant Robert
26 Durkee, who is proposing to relocate his lot line. There would be an equal land swap between
27 51A and 51B Laurel Lane, resulting in no change to the lot areas. There would be no impact to
28 building setbacks or other areas that would require relief from the Zoning Board. Mr. Chagnon
29 confirmed that there would be no changes that would make the lot more nonconforming than it
30 currently is. Chair Horgan noted that the plans presented at this meeting are different than what
31 was presented to the Board at last month's meeting. Mr. Chagnon noted that the plan has been
32 revised to eliminate the need for a Variance from the New Castle Zoning Board.
33

34 Chair Horgan opened the public hearing at 7:10 p.m. Mr. Urbanek of 49 Laurel Lane presented a
35 slideshow that contained pictures of the lots. He noted that the Durkees' proposed lot line
36 adjustment is clearly for the purpose of putting in a dock. Mr. Urbanek discussed the cumulative
37 effect of various improvements to the Durkees' property and the impacts on the Urbaneks. In
38 2012, the Urbaneks did not have any objections to the Durkees' request for a setback variance.
39 There was an area of 1,000 square feet that was supposed to be left undisturbed, but the area
40 ended up being disturbed and no buffer plantings were installed as agreed upon. Last year, the
41 Urbaneks expressed concern over water runoff in their driveway from the Durkees. The
42 Urbaneks are concerned about the effects on their views and privacy as a result of the proposed
43 lot line adjustment. Mr. Urbanek concluded that he is very concerned about where this project is
44 going.
45

1 Mary Kennedy questioned why there is a need to make a lot line adjustment, and wanted to know
2 the purpose. Chair Horgan stated that it is not a necessity for the Applicant to explain why he is
3 requesting a lot line adjustment. Mr. Chagnon explained that the lot line relocation results in a
4 transfer of some shoreline to the Durkee lot. The New Castle ordinance specifically calls for 60
5 feet of shore frontage in order to place a dock. This distance will be obtained by the proposed lot
6 line adjustment.

7
8 Mr. Stewart asked about the NHDES requirement on shore frontage. Mr. Riker explained that the
9 DES rule requires 75 feet of shoreline frontage, and that the Durkees submitted a request in June
10 2019 to waive this requirement. The dock application needs to demonstrate compliance with the
11 DES rules, such as showing no adverse environmental effect. All of this has previously been
12 submitted to the DES. The New Castle Conservation Commission provided input in 2019 and
13 those comments were given to the DES. There was discussion about how the footage on the
14 water side of the property was measured. Chair Horgan allowed discussion about the proposed
15 dock, but reiterated that the dock is not germane to the application before the Planning Board for
16 the lot line adjustment.

17
18 Mr. Chagnon addressed a letter submitted by Attorney Jeremy Eggleton of Orr and Reno, who is
19 representing Mr. and Mrs. Urbanek. Attorney Eggleton argued that the proposed lot line
20 reconfiguration changes the lot for which a variance was obtained from the Zoning Board a
21 number of years ago. Therefore, the Planning Board cannot approve this application. Mr.
22 Chagnon stated that Attorney Eggleton's argument would mean that every property that ever
23 received a variance would never be able to be changed in the future. Mr. Chagnon stated that the
24 germane question in this case is whether any nonconformances are being created, and concluded
25 that there are no further nonconformances with this application. Chair Horgan added that
26 Attorney Keriann Roman, Counsel for the Town of New Castle, advised that changes can be
27 made to a lot that has been given a variance as long as the current zoning ordinances are
28 observed.

29
30 Mr. Chagnon previously prepared an application for Mr. Baker to tear down his home and
31 replace with a new structure that was moved away from the water, which was important to
32 protect the resources as much as possible. The front variance for 16 feet where 20 feet is required
33 was granted by the Zoning Board. Mr. Chagnon noted that the relief to the setback was justified
34 because the primary structure was moved away from the resource and the front setback was
35 increased.

36
37 Mr. Chagnon addressed the issue of alleged inconsistencies in the Durkees' application that
38 Attorney Eggleton described in his letter to the Planning Board. Mr. Chagnon explained that the
39 purpose of the previous plan was for a replacement structure and did not have anything to do
40 with the amount of shoreline frontage. The plan focused on the highest observable tide line
41 setbacks to the structure. Mr. Chagnon did not feel that there is any discrepancy in the plans that
42 requires further explanation, and concluded that it is legitimate purpose to ask for a lot line
43 adjustment with the objective of allowing sufficient shoreline frontage so as not to require a
44 variance from the Town zoning ordinances.

1 Brooks Kennedy spoke about his concerns with the navigability of the water. He asked who
2 checks the engineering firm's drawings. Mr. Stewart responded that the Town relies on the
3 engineering firms who certify the plans. Mr. Stewart stated that he would not question the plans
4 and is not concerned about their integrity. Chair Horgan added that it is not unusual for the
5 Planning Board to ask to have a third party double check the plans that were presented at a
6 hearing. Normally this occurs when the case is very involved or contested or there is an issue
7 with a setback from a mapped wetland whose borders can change over time. This serves as a
8 confirmation to the Board that there is agreement that what has been mapped out is accurate. She
9 pointed out that by certifying the plans, the engineering firm's name, reputation, and license are
10 on the line. Chair Horgan reiterated that this public hearing is to discuss a lot line adjustment and
11 not a proposed dock.

12
13 Speaking to Mr. Kennedy's concern over navigability, Mr. Riker stated that applications for
14 docks must be reviewed by the Pease Development Authority, who forwards their findings to the
15 NHDES. The distance from the Durkees' proposed dock to the Urbanek's dock is 81 feet.

16
17 Mr. Urbanek asked if an error in the plans would affect the Board's decision on the lot line
18 adjustment. Mr. Chagnon stated that he is not aware of any third-party review being done on land
19 surveying plans, and argued that if there was a dispute, it would be taken up as a civil matter. He
20 explained that new survey work was done at the time of the dock application in order to measure
21 the hydrography going out into the water body. Chair Horgan felt that the Durkees' lot line
22 application is simple and straightforward, and it would be very unusual to have a third party
23 come in to analyze these particular surveyed plans. Mr. Landry agreed and stated that in his
24 experience, he has never seen an outside review of a lot line adjustment.

25
26 Chair Horgan read the following statement from Attorney Roman: "When a lot line adjustment
27 application is before the Planning Board, the Board may only consider the lot line adjustment
28 itself and the configuration of the new property boundaries to ensure compliance with
29 subdivision regulations and the zoning ordinance – the Board may not consider the future
30 proposed *use* of the property – in this case, a dock. That is for future permitting and cannot be a
31 basis for denial or approval of the lot line adjustment. This is per the Town Attorney and NH
32 case law."

33
34 Ms. Kennedy asked what the Planning Board guidelines are in making the decision for a lot line
35 adjustment. Chair Horgan stated that the Board looks to see if the proposal meets all the
36 requirements of the zoning ordinances. The proposed use is not in the purview of the Planning
37 Board.

38
39 Attorney Eggleton argued that this is a significant ask of the Town and will impact the Urbaneks.
40 Mr. Chagnon stated that while he is sympathetic to concerns over changes to the lot over time,
41 that is not pertinent to the current application for a lot line adjustment.

42
43 Chair Horgan closed the public hearing at 8:07 p.m. and brought discussion back to the Board.
44 Chair Horgan reiterated that Attorney Roman stated that the Board must look at the application
45 as a lot line adjustment and not a dock application. Attorney Roman also stated that it is
46 permitted to change one's property after getting a previous variance, and she did not see any

1 place where the proposed lot line adjustment was contrary to anything in the Town Zoning
2 Ordinance. Chair Horgan pointed out that there is no additional variance needed in this case. The
3 supposed errors and inconsistencies in the application and the measurement of 40 feet of
4 shoreline frontage is irrelevant to the lot line adjustment application. Chair Horgan stated that
5 she does not see a drastic need for the Board to visit the site before making a decision, as was
6 suggested in Attorney Eggleton's letter. She felt that Mr. Urbanek's Powerpoint presentation
7 showed the site sufficiently.
8

9 Mr. Stewart asked whether compliance issues that come up in discussion are relevant to the
10 Board's decision. Chair Horgan responded that it is not relevant for tonight, as these would be
11 enforcement issues that need to be dealt with separately from the lot line adjustment. Mr. Stewart
12 pointed out that there is no additional nonconformity being created with this lot line adjustment,
13 and felt that the Durkees have the right within the ordinances to adjust their lot line.
14

15 Ms. Murray felt that it is difficult not to look at the overall plan to build a dock, and thinks there
16 will be continued discussions about this plan. Chair Horgan stated that the Planning Board has an
17 obligation to stay in their lane and to make sure the lot line adjustment is in line with the Town
18 ordinances. In this case, she does not see any violations to the zoning ordinances that would arise
19 from the lot line adjustment. Ms. Sofio commented that she is sympathetic to concerns about
20 views, and felt that double checking measurements is relevant to the dock and not to the
21 application before the Board tonight. She felt that the Board was in a constrained role with this
22 application.
23

24 *Mr. Stewart motioned to approve the lot line adjustment for applicants Cynthia and Robert*
25 *Durkee and Baker Family Trust of 2016, 51A and 51B Laurel Lane, Map 11, Lots 26 and 27, as*
26 *submitted on Ambit Engineering plans originally dated 8/5/2020 and revised per client on*
27 *9/1/2020. Mr. Landry seconded. Motion carried unanimously.*
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30 **2. Review and approve minutes to the August 26, 2020 meeting of the Planning Board.**

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32 Ms. Murray made a motion to approve the minutes as amended. Ms. Sofio seconded. Motion
33 carried unanimously.
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36 **3. Old Business.**

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38 None.
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40 **4. New Business.**

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42 Chair Horgan announced that Russ Bookholz is the new Town Building Inspector. Chair Horgan
43 has met with him and feels he will be a wonderful resource, noting that he will be holding
44 regular hours and has many years of experience.
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2 **5. Correspondence.**

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4 None.

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7 **6. Adjourn.**

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9 There being no further business, Mr. Stewart moved to adjourn the meeting. Ms. Murray
10 seconded. The motion carried, unanimously, and the meeting adjourned at 8:20 p.m.

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12
13 Respectfully Submitted,

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15
16 Meghan Rumph
17 *Recording Secretary*