

APPROVED
MINUTES OF THE NEW CASTLE PLANNING BOARD
Wednesday, October 28th, 2020 – 7:00 p.m. (Recreation Building)

Acceptance of the Standard Boundary Survey Plan for the New Castle Congregational Church, Map 13, Lots 9 and 10.

Public Hearing for the approval of a Subdivision Application for the Shane Smith Revocable Trust, 372 Wentworth Road, Map 5, Lot 3A.

Public Hearing for a Conditional Use Permit for the applicants Steven A. Joselow and Margaret A. Lamb, 12 Cranfield Street, Map 17, Lot 33, for impact within the 100' tidal buffer for shoreline stabilization including the repair/replacement of an existing stone revetment and replacement of the existing wooden deck in-kind.

Public Hearing for a Subdivision for applicant The Agnes Palmer Revocable Trust, 34 Oliver Street, Map 16, Lot 40.

Members Present: Darcy Horgan, Chair, Tom Hammer, Lorne Jones, Kate Murray, Margaret Sofio, Bill Stewart.

Members Absent: Rich Landry.

Others Present: David Borden; Kevin Callahan; John Chagnon, Ambit Engineering; Mary Ann Driscoll; Etoile Holzaepfel; Iain Moodie; Steve Riker, Ambit Engineering; Curt Springer; Mary Tilney.

Chair Horgan called the meeting to order at 7:02 p.m. Noting a quorum, Chair Horgan indicated that the voting members are herself, Ms. Murray, Ms. Sofio, Mr. Stewart, and Mr. Hammer. Mr. Jones is an alternate.

1. Acceptance of the Standard Boundary Survey Plan for the New Castle Congregational Church, Map 13, Lots 9 and 10.

Etoile Holzaepfel spoke on behalf of the New Castle Congregational Church, who had a survey done by Ambit Engineering so that there is a proper survey on record showing where boundaries are. The survey also shed light on drainage plans.

Mr. Jones motioned to accept the Standard Boundary Survey for the New Castle Congregational Church, 55, 65, and 73 Main Street, Map 13, Lots 9 and 10, as prepared by Ambit Engineering on a plan issued for recording dated 09/28/2020. Ms. Murray seconded. During the discussion period, Mr. Stewart raised concerns about why the Planning Board is being asked to vote on and accept a plan when the Board does not vote on or accept survey plans as a normal course of

business. Chair Horgan stated that the Church asked the Planning Board to vote on the plan so that there would be some record of it having been filed with the Town. She agreed that it was an unusual request. Mr. Stewart noted that plans are normally filed with the Registry, and he wondered about potential obligations given that the Town is an abutter to the Church. He stated that he would not vote to accept the survey plan without consulting with Town Counsel.

Ms. Holzaepfel explained that there was no one available at the Town Hall who could accept the survey plans given the complications of Covid. She pointed out the importance of the Town acknowledging these plans. John Chagnon of Ambit Engineering advised that the Town recognize the plan, which outlines obligations such as drainage maintenance and recognizes inaccuracies in the Town tax assessments for part of the Church property. He felt that the Planning Board was the correct place to present the plans. Ms. Holzaepfel added that the Town received land from the Church to expand Town facilities and as a part of that agreement, the Town agreed to maintain certain drainage areas, but the deed did not specify where exactly this would be. The plan gives specificity of where this drainage is that must be maintained by the Town.

Ms. Sofio felt that the Board of Selectmen should review and vote on the acceptance of the plan. Mr. Stewart agreed that this would be more appropriate. Mr. Chagnon stated that the statute requires that a copy of the plan be provided to the Town, which is why Ms. Holzaepfel is presenting it to the Planning Board. The plan has already been filed with Rockingham County. Ms. Sofio responded that unless there is a specific statute obliging the Planning Board to accept the plan, she does not feel comfortable voting on it.

Chair Horgan concluded to postpone the motion and make no decision on the plan this evening. If Ms. Holzaepfel needs to come back before the Planning Board with the survey plans, she can do so at the next scheduled meeting in November.

2. Public Hearing for the approval of a Subdivision Application for the Shane Smith Revocable Trust, 372 Wentworth Road, Map 5, Lot 3A.

Mr. Chagnon presented the minor subdivision application on behalf of Shane Smith. The project proposes a subdivision of one lot into two lots. The lot at 372 Wentworth Road is currently developed with a single-family residence and an existing septic system. The subdivided lot, Lot 1, will be one-acre and have access to Abigale Lane. Rich Landry will be the purchaser of Lot 1 in the proposal. A letter from Ken McCord, President of the Ledges at Great Island Homeowners Association, was distributed. The letter served to verify acceptance of the one-acre lot to be subdivided off the property at 372 Wentworth Road. The subdivided lot shall have all rights of ownership within the Homeowners Association, including frontage and access on Abigale Lane and access to all utilities, such as water, sewer, electric, and communications, which currently exist in the street.

Mr. Chagnon noted that the new front lot will meet all frontage, size, and setback requirements of the New Castle Zoning Ordinance. The subdivision application includes one waiver request to the High Intensity Soil Survey (HISS) Map requirement for a subdivision. This request is made

as the subdivision will consist of one lot with the existing home utilizing the existing septic tank, and the other lot connecting to the sewer line in Abigale Lane. Test pits will be conducted and topography maps provided, so the additional information gathered from a HISS Map will not be of great benefit, according to Mr. Chagnon. No wetlands have been found to be present at the site, and the need to map soil types is not critical in this case.

Mr. Hammer motioned to approve the application of Shane Smith Revocable Trust of 372 Wentworth Road, Tax Map 5, Lot 3A, to be subdivided into two parcels, Lots 1 and 2, as shown on the Ambit Engineering plans dated 10/06/2020, and to approve the waiver request to the High Intensity Soil Survey Map requirement as outlined in the New Castle Subdivision Regulations Section 6.2.4.15. Ms. Sofio seconded. Motion carried unanimously.

3. Public Hearing for a Conditional Use Permit for the applicants Steven A. Joselow and Margaret A. Lamb, 12 Cranfield Street, Map 17, Lot 33, for impact within the 100' tidal buffer for shoreline stabilization including the repair/replacement of an existing stone revetment and replacement of the existing wooden deck in-kind.

Steve Riker of Ambit Engineering presented on behalf of Steven Joselow and Margaret Lamb. The project involves impact to the 100 foot Town of New Castle Wetland Buffer to allow for shoreline stabilization, including the repair and replacement of an existing stone revetment and replacement of the existing wooden deck in-kind. There will be no increase of impervious surface of the site. The deck and steps would be the same footprint and location. The existing deck has two levels. The deck would be reconstructed to have one single level. Mr. Riker went through the extensive plans that were submitted to the DES.

Mr. Riker described how the existing stone revetment is in poor condition, and the replacement would be slightly smaller in terms of footprint. The shoreline stabilization component of the project will result in a reduction of the area of stone rip rap surface on the site and provide for a buffer planting area that will improve storm water quality on the site. Mr. Riker explained that a living shoreline component is required by the NHDES for shoreline stabilization projects. He presented plans showing proposed buffer plantings with a planting schedule to meet this living shoreline component. He noted that Mr. Joselow and Ms. Lamb have already been planting along the shoreline, and this plan will expand the planting area. Mr. Riker also showed how the highest observable tide line (HOTL) goes through the middle of the revetment area.

The Applicants are also seeking to modify an existing docking structure by adding a 4 foot by 53 foot fixed wood pier extension, a 3 foot by 25 foot gangway, and a 10 foot by 30 foot float with an overall structure length of 138 feet. The dock application has been submitted to the DES and is under review. A coastal vulnerability assessment has been submitted as well. Mr. Riker stated that because the dock is below the HOTL, it falls in the public trust and therefore should not be considered part of the conditional use permit application. He did not believe that the Planning Board has jurisdiction over the dock.

Chair Horgan read the notice of recommendation from the Conservation Commission's October 6, 2020 meeting. The Commission recommended approval of the plans for the work above the HOTL, which includes new stairs, a replacement deck, and buffer planting area.

Mr. Stewart asked about the effect of a boat sitting on top of the eel grass that is located very close to the proposed dock extension. Mr. Riker stated that the Applicants will likely shorten the dock extension by nine feet so as not to impact the eel grass community.

Mr. Hammer asked for clarification about the purpose of the revetment. Mr. Riker explained how it is constructed at an angle to absorb wave energy, which makes the stone revetment more functional than a vertical wall. The revetment would be tied into the elevation of the existing wall. The length of the wall and some of the width will be reduced. The slope of the proposed wall will be a bit steeper, which will allow for as much green along the shoreline as possible. Mr. Jones asked how the stones for the revetment would be brought in. Mr. Riker stated that most of the stones will be reused and any additional stones needed would be brought in by truck. Chair Horgan questioned how the land would be protected from the impact of heavy equipment. Mr. Riker responded that it will most likely be just one excavator at the site. Erosion and sediment control devices as well as turbidity control will be put in place. Most of the work will take place in dry areas when the tide is low to minimize disturbance to the tidal wetland.

Chair Horgan opened the public hearing at 7:50 p.m. Mary Ann Driscoll of 4 Cranfield Street expressed several concerns about the proposal. She asked about the modification of the pier extension per the plan presented to the Planning Board, which she noted was extremely different from what was depicted in the DES filing. She stated that the pier would be expanded about 150% and would extend 155 to 160 feet from shore. Ms. Driscoll cited Section 3 of the New Castle Zoning Ordinance as well as the Master Plan, which point out the uniqueness of the Historic District and the waterfront where the Applicant's home is situated. She felt that based on Town Ordinances, the Master Plan, and the location of the project, it would be prudent for the Planning Board to consider the character of the cove in making its decision. She was very concerned about the much larger proposed dock changing the character of the cove. Ms. Driscoll also expressed how the project has been overwhelming for neighbors, who were never notified of the previous Conservation Commission meeting.

Chair Horgan noted that the section of the Town Ordinance that Ms. Driscoll referenced is not in agreement with the State law. She explained that the State has taken away the rights of towns to weigh in on anything that extends out into the water. She reiterated that Town Counsel has advised the Planning Board that they do not have jurisdiction over the dock. Mr. Riker pointed out that the dock was shown in the Conditional Use Permit plans because it is part of the overall project, and the same set of plans was submitted to the DES.

Mr. Stewart recommended that Ms. Driscoll approach the DES with her concerns relative to the dock. Ms. Murray added that the DES should consider how any structure impacts people's ability to access the water. Mr. Hammer asked if any part of the project besides the proposed dock would impact Ms. Driscoll's property or her ability to put in a dock if she wanted one. She responded that she did not know.

Mary Tiley of 28 Cranfield Street asked when the change in law over dock jurisdiction took place. Mr. Stewart stated that the Conservation Commission and Planning Board used to weigh in on dock applications up until around seven or eight years ago. There were a number of court cases for other towns in New Hampshire that clarified that the NHDES has control over docks. David Borden of 40 Walbach Street urged the owners to work with their existing dock, particularly as they have not actually lived in the house yet. He noted that he has sent several questions to the DES about the dock.

Chair Horgan closed the public hearing at 8:20 p.m. and brought discussion back to the Board. Mr. Hammer clarified that the Town must re-write the Zoning Ordinance to reflect the change in State law over docks. Chair Horgan stated that this is a work in progress.

Mr. Stewart motioned to approve the Conditional Use Permit for Applicants Steven A. Joselow and Margaret A. Lamb, 12 Cranfield Street, Tax Map 17, Lot 33, for impact within the 100' tidal buffer for shoreline stabilization including the repair/replacement of an existing stone revetment and replacement of the existing wooden deck in-kind as depicted on the Ambit Engineering plans dated 09/22/2020. The Planning Board is not considering or approving the dock as part of this motion. Mr. Hammer seconded. Motion carried unanimously.

4. Public Hearing for a Subdivision for applicant The Agnes Palmer Revocable Trust, 34 Oliver Street, Map 16, Lot 40.

Mr. Chagnon, on behalf of Agnes Palmer Revocable Trust, presented a proposal to subdivide one lot into two lots. Amy Gworek, Trustee of Agnes Palmer Revocable Trust, was present as well. Mr. Chagnon described the unique aspects of the property at 34 Oliver Street, particularly how the lot is long, skinny, and rather large compared to abutting lots. The existing lot is 1.79 acres and has sufficient frontage on Oliver Street to conform to zoning requirements. The proposed Lot 1 would be 20,000 square feet and Lot 2 would be 52,740 square feet. There would also be a 30 foot wide private right of way measuring 5,507 square feet to create frontage. A sewer easement to the Town of New Castle crosses the lot. The water line is located in the area of the proposed right of way, so there would be no need for an easement. An access and utility easement would benefit Lot 2.

The proposed Lot 1 has a tennis court and other features that total approximately 38% impervious surface area lot coverage, which exceeds the impervious surface area permitted per Town Zoning Ordinances. Lot 2 would have 17% impervious surface coverage, which meets the Town requirements. Mr. Chagnon noted that the tennis court is something that the Applicant would like to keep in the short term, although removing it would significantly reduce the impervious surface area coverage. He proposed that the Planning Board approval contain a clause that any building permit applied for Lot 1 must comply with zoning ordinances or get the necessary variances. Mr. Chagnon requested feedback from the Board regarding ownership and maintenance of the private right of way, as he understood the need for documentation of a maintenance agreement between the lot owners.

Mr. Hammer asked about the current driveway, which Mr. Chagnon confirmed is completely gravel. Mr. Hammer noted that if the right of way has to be built with asphalt per Town Ordinances, this could impact pervious and impervious surface areas. He felt that the right of way surface area should be considered in the overall impervious surface area calculations, although Mr. Chagnon argued that it does not technically count. Mr. Chagnon agreed that the expansion of the proposed right of way area would have to be considered in terms of drainage impacts. Board members shared concerns about how the right of way permeability would be counted toward the overall impervious lot coverage. Mr. Chagnon explained that the private right of way creates the frontage needed, and that normally the permeability of the right of way counts in the calculations of the road. Chair Horgan asked who would own the proposed right of way and pay taxes on it. Mr. Chagnon proposed that it would be a joint ownership, and was unsure who would be responsible for paying the taxes.

Mr. Hammer calculated that the impervious lot coverage for the whole lot is around 21%, which Mr. Stewart calculated would be under 20% if the right of way is not included. Chair Horgan asked if Lot 2 could ever be subdivided again. Mr. Chagnon responded that a road could be built to make more lots, but that is not the intent of the Applicant.

Chair Horgan stated that a public hearing would be held this evening, but the Board would hold off on a vote so that Town Counsel can weigh in on the proposed subdivision. Chair Horgan wanted clarification on who would own the right of way and if the ownership would be split. She felt that a maintenance agreement should be submitted in writing and become part of the deed. She also wondered if it would be preferable for the road to be asphalt as required, or be gravel or possibly some sort of pervious surface. Chair Horgan stated that the Town Fire Department should weigh in on the proposed right of way as well.

Chair Horgan opened the public hearing at 9:07 p.m. She read an email received from Carol White, chairwoman of the Cemetery Trustees in New Castle. Ms. White stated that there is possibly a 14 foot by 14 foot cemetery under the tennis court or somewhere near this property. This has not been researched enough to make any definite statement about its existence or location. Mr. Chagnon requested a copy of the email so that they could investigate further. Mr. Hammer asked who would look into the possible cemetery if there is no record of it. Ms. Murray noted that the State archaeologist could research the matter.

Curt Springer of 98 Cranfield Street expressed his support of the proposal and noted that he would love to have the tennis court remain.

Iain Moodie of 62 Portsmouth Avenue also spoke in support of the application and felt that it would create a more conforming situation if the lot is further developed in the future. He also supported keeping the tennis court.

Kevin Callahan of 26 Oliver Street stated that he hoped the Board will be diligent with the technical specifications of the subdivision. He had some concerns of the aesthetics of the subdivision and stated that he would be better prepared to go into detail about these concerns at the next meeting.

Mr. Chagnon suggested the Board conduct a site walk soon to go over concerns before there is snow coverage. Chair Horgan closed the public hearing at 9:18 p.m. and stated that the case will be continued for the Planning Board meeting next month.

5. Review and approve minutes to the September 23, 2020 meeting of the Planning Board.

Ms. Murray made a motion to approve the minutes as amended. Mr. Hammer seconded. Motion carried unanimously.

6. New Business.

Mr. Stewart noted that there may be an ordinance change that would require a special Town meeting in January. There is some new FEMA information that the Town needs to accept by January 2021. The Town has petitioned to push off any final decision until the regularly scheduled Town meeting in May 2021, but it is unclear if this will be permitted. There may need to be a public hearing for the Planning Board to accept this new FEMA information to ensure that the Town has continued flood coverage. Chair Horgan stated that she is planning on having the Planning Board vote on this topic in November, with a public hearing in December. Mr. Stewart also noted that the Town is looking to rejoin "53B", which allows a consortium of towns to buy into a waste management contract. This would save an estimated \$5,000 to \$6,000 per year. Mr. Stewart noted that the plan is to piggyback this topic together with the FEMA subject at the Planning Board's public hearing.

Chair Horgan stated that the next Planning Board meeting will be held on Wednesday, November 18, 2020 at 7:00 p.m. The December meeting will be held on December 16, 2020 at 7:00 p.m. Note: these dates do not follow the normal pattern of meeting on the 4th Wednesday of the month. Dates were changed to accommodate the holidays.

7. Correspondence.

None.

8. Adjourn.

There being no further business, Ms. Murray moved to adjourn the meeting. Mr. Hammer seconded. The motion carried, unanimously, and the meeting adjourned at 9:34 p.m.

Respectfully Submitted,

Meghan Rumph
Recording Secretary