

APPROVED
MINUTES OF THE NEW CASTLE PLANNING BOARD
Wednesday, November 18th, 2020 – 7:00 p.m. (Recreation Building)

Welcome Iain Moodie as a new Alternate Member of the Planning Board.

Vote to approve a voluntary merger of contiguous lots for Applicant P. Jonathan Dylan Barker, 28 Colonial Lane, Map 12, Lot 5 and Map 17, Lot 16.

Continuation of the Public Hearing for approval of a Subdivision for applicant Agnes Palmer Revocable Trust, 34 Oliver Street, Map 16, Lot 40.

Vote to allow release of Escrow Funds held for John and Jean Shields, 41 Mainmast Circle, Map 9, Lot 17, for landscape planting.

Planning Board vote to accept the following proposed changes in order to conform to the new FEMA regulations:

- The New Castle Zoning Ordinance Sections 3.1.10 and 9.1 Flood Plain Development District.**
- The New Castle Subdivision Regulations Section 6.2.4.17.**
- The New Castle Site Plan Review Regulations Section 8.8.**

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

Members Absent: None.

Others Present: Russ Bookholz, Town Building Inspector/Code Enforcement Officer; John Chagnon, Ambit Engineering; Sam Palmer; Timothy Phoenix, Hoefle, Phoenix, Gormley & Roberts, P.A.

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 and Mr. Moodie are alternates.

1. Welcome Iain Moodie as a new Alternate Member of the Planning Board.

Chair Horgan announced that Iain Moodie has signed on for a three-year term as an Alternate Member of the Planning Board.

2. Vote to approve a voluntary merger of contiguous lots for Applicant P. Jonathan Dylan Barker, 28 Colonial Lane, Map 12, Lot 5 and Map 17, Lot 16.

Ms. Sofio noted that Mr. Barker came before the New Castle ZBA last month, and the merger would make his lot more conforming.

Ms. Murray motioned to approve the voluntary merger of contiguous lots for Applicant P. Jonathan Dylan Barker, 28 Colonial Lane, Map 12, Lot 5 and Map 17, Lot 16. Ms. Sofio seconded. Motion carried unanimously.

3. Continuation of the Public Hearing for approval of a Subdivision for applicant Agnes Palmer Revocable Trust, 34 Oliver Street, Map 16, Lot 40.

John Chagnon presented the revised plans on behalf of Agnes Palmer Revocable Trust. He recently conducted a site walk with the Planning Board on November 11. The project proposes a subdivision of one lot into two lots. The proposal creates frontage via a private right-of-way to be located in the general location as the current driveway to the existing home on the property. A small stretch of existing gravel driveway would cross over Lot 1 to provide access to Lot 2, which would have a driveway easement. Mr. Chagnon stated that they would widen the curve to provide better access to the driveway going to Lot 2. 100 feet of frontage would be created for Lot 2 from the private Right of Way.

Mr. Chagnon addressed three main comments in a memo submitted by Keriann Roman, Town Counsel. The first topic was regarding the possibility of a cemetery existing on Lot 1. Mr. Chagnon argued that a Condition of Approval from the Planning Board is not required given that there are NH Statutes that would dictate how to proceed if evidence of a cemetery is found. He felt that a Condition of Approval would create an unnecessary cloud on the property title. Mr. Chagnon noted that he has not had a chance to drill deep enough down to confirm if a cemetery exists, and he needs more time to review the material submitted by the Town Cemetery Trustee.

The second topic of concern was regarding the exact configuration of the proposed Right of Way. Mr. Chagnon stated that it would be a traditional subdivision with its own street, and would require waivers from some of the street requirements in Sections 7.2.1 and 7.2.2 of the Subdivision Regulations. The Right of Way would be 30 feet wide with 20 feet of gravel surface and would be owned equally between Lots 1 and 2. Mr. Chagnon noted that the Right of Way is not included in the land area. He also included language for a proposed Maintenance Agreement for the Planning Board to review.

The third topic in Attorney Roman's memo was about Lot 1 and the tennis court. Mr. Chagnon has added a Condition of Approval note to the revised Subdivision Plan that the existing tennis court on Lot 1 shall remain in place only if the required variances for use and coverage are granted by the New Castle ZBA.

Mr. Chagnon presented a Request for Waivers as follows:

Section 7.2.1 Street Design

7.2.1.1 Platting of Streets: to permit a 30 foot private Right of Way.

7.2.1.3 Dead End Streets and Cul-De-Sacs: to permit a T-turn at the end of the driveway

of Lot 2.

Section 7.2.2 Street Construction Standards

7.2.2.6 Pavement Material: to permit a gravel driveway

Mr. Chagnon referenced discussions at the site walk about expanding the driveway width. He stated that the driveway location could be changed to save some of the trees along the Callahans' property.

A letter from Mr. Bookholz, Town Building Inspector, was submitted that addressed access for emergency vehicles. Mr. Bookholz and the Town Fire Chief walked the property at 34 Oliver Street and proposed alterations that would allow a ladder truck to turn around at the end of the driveway. Mr. Chagnon pointed out that in order to accommodate this, a very large tree would have to be taken down and some additional fill would be needed in the wetland buffer. He stated that most homes do not provide turn-arounds for firetrucks. He discussed the possibility of introducing a turn-around in the vicinity of the end of the private Right of Way.

Chair Horgan asked if what is being created is a street or a Right of Way, because it is referred to as a 30 foot wide private Right of Way, but Note 9 on the revised plans states that the "30 foot wide private Right of Way is proposed as a street under the New Castle Ordinance." Mr. Chagnon explained that the street is contained within the Right of Way. The street is the area that is driven on, and the Right of Way is the bounds of the area surrounding the street. Mr. Bookholz clarified that it would be classified as a street if the subdivision were done with the intention of the Town taking over the road, whereas the Right of Way is with no intention of the Town taking over the road maintenance. A Right of Way is less stringent in standards compared to a street. A Right of Way is private, not public, and counts as street access.

Mr. Hammer asked why the Applicant is coming before the Planning Board first when there are things within the subdivision that would need ZBA approval for variances. Chair Horgan pointed out that it was not clear that the Applicants would be going down the variance route with the initial application, so that is why they came before the Planning Board first. Mr. Hammer further noted that creating this subdivision will result in a nonconforming lot because of the lot coverage of the existing tennis court. In addition, the existing barn/garage would not have adequate setbacks from the Right of Way/street. Mr. Chagnon responded that the building is a garage so is considered an accessory dwelling unit. Sam Palmer, one of the Trustees, confirmed that the barn has not stored cars but has room to do so. There was discussion about the setback requirements on each side given that the property is a corner lot.

Mr. Hammer asked if the proposal was contingent on no cemetery being found. Chair Horgan responded that the cemetery issue could not hold up the PB moving forward with the application, and there is no definitive documentation that there is a cemetery. She explained that State laws govern what happens when digging and finding a cemetery, and it is not even a given that a cemetery exists.

Mr. Bookholz described the Fire Chief's concerns with emergency vehicles having access to the property and proposed changes to make it easier for firetrucks to turn around. Chair Horgan

requested that Mr. Bookholz work with Mr. Chagnon and the Applicant to present a revised plan to the Planning Board.

There was discussion about what waivers would be needed based on Mr. Bookholz's interpretation of a Right of Way. Chair Horgan did not believe that a waiver would be needed for Sections 7.2.1.1, 7.2.1.2, and 7.2.1.3. A waiver would be needed for Section 7.2.2.6. Mr. Hammer asked if inspection of the Right of Way material would be required. Mr. Bookholz responded that he would be inspecting the entire site to make sure everything is done based on the final plans. Mr. Stewart did not have any issues with the gravel material, but felt that it could be tricky to argue that no waivers are needed because the proposal cites it as a Right of Way and not a street. Chair Horgan noted that Attorney Roman appeared to be under the impression that the street conditions would apply even though it would be classified as a Right of Way.

Chair Horgan opened the public portion of the hearing at 8:09 p.m. Attorney Timothy Phoenix was present on behalf of Kevin and Debbie Callahan, who directly abut the property at 34 Oliver Street. Attorney Phoenix explained that the Callahans do not have a problem with the subdivision, but they are concerned about the condition of the property. He stated that in his experience, subdivision approval is not granted until an applicant receives the necessary variances first.

Attorney Phoenix stated that the primary concern of the Callahans is cleaning up the area around the barn that is visible from their house. Mr. Bookholz added that he sent out letters a few days ago about cleaning up the area, as this is a code enforcement issue. Attorney Phoenix believed that the Planning Board could make it a Condition of Approval that the area be cleaned up. He cited Sections 2.1, 2.4, and 5.2.7 of the Subdivision Regulations, the objectives of the Master Plan to maintain a just balance between the enjoyment of private property and the community obligation to protect the general welfare of inhabitants, and Section 4.1 in the New Castle Zoning Ordinances that specifically prohibit junk yard areas in residential districts. Attorney Phoenix noted that the Callahans are trying to be good neighbors and have raised concerns about the junk in the past, but nothing has come of it. Attorney Phoenix has spoken with one of the owners and with Mr. Chagnon about the Callahans' concerns, but has not heard anything further from them.

Chair Horgan closed the public portion of the hearing at 8:20 p.m. and brought discussion back to the Board. She felt that the Board is not in a position to have a vote at this meeting, and would like the Applicant to get the necessary variances from the ZBA before coming back to the Planning Board for a final vote.

Chair Horgan motioned to continue the public hearing until the next scheduled meeting, which will be Wednesday, December 16 at 7:00 p.m. at the Rec Center at the Commons. Mr. Hammer seconded. Motion carried unanimously.

4. Vote to allow release of Escrow Funds held for John and Jean Shields, 41 Mainmast Circle, Map 9, Lot 17, for landscape planting.

Conni White, Chair of the New Castle Conservation Commission, inspected the plantings at the Shields' property and found everything in compliance with the stipulations on the Notice of

Decision. She submitted to the PB the Release of Escrow form and recommended releasing all of the escrow.

Mr. Hammer moved to release the Escrow Funds held for John and Jean Shields, 41 Mainmast Circle, Map 9, Lot 17, for landscape planting based on the recommendation of the Chair of the Conservation Commission. Ms. Murray seconded. Motion carried unanimously.

5. Planning Board vote to accept the following proposed changes in order to conform to the new FEMA regulations:

- The New Castle Zoning Ordinance Sections 3.1.10 and 9.1 Flood Plain Development District.**
- The New Castle Subdivision Regulations Section 6.2.4.17.**
- The New Castle Site Plan Review Regulations Section 8.8.**

Chair Horgan distributed proposed changes to the New Castle Zoning Ordinance, Subdivision Regulations, and Site Plan Review Regulations. These changes were done by the Office of Strategic Initiatives so that New Castle could remain in good standing with the new FEMA's National Flood Insurance Program (NFIP). She explained that there will be new FEMA maps coming out on January 29, 2021. The plans were ten years in the making, and the Town must revise its ordinances to include the new language and rules so that New Castle remains in compliance. Once the Planning Board approves these changes, there will be a public hearing next month. Mr. Stewart stated that the Town is petitioning to get an exception to hold the meeting in May in conjunction with the annual Town Meeting, rather than holding a special meeting in January for legal and COVID-19 considerations. Mr. Bookholz felt that the new FEMA regulations are better because they rely on current wetlands maps.

Chair Horgan motioned to accept the proposed changes to the current New Castle Zoning Ordinance Section 3.1.10 and Section 9.1 Flood Plain Development District as provided by the Office of Strategic Initiatives to allow New Castle to remain in good standing with FEMA's new National Flood Insurance Program. Mr. Hammer seconded. Motion carried unanimously.

Chair Horgan motioned to accept the proposed changes to the current New Castle Subdivision Regulations Section 6.2.4.17 and the New Castle Site Plan Review Regulations Section 8.8 as provided by the Office of Strategic Initiatives to allow New Castle to remain in good standing with FEMA's new National Flood Insurance Program. Ms. Sofio seconded. Motion carried unanimously.

6. Approve minutes to the Planning Board meeting on October 28, 2020 and minutes to the Site Walk of 34 Oliver Street on November 11, 2020.

Ms. Murray moved to accept the minutes as written for the Planning Board meeting on October 28, 2020 and the Site Walk on November 11, 2020. Ms. Sofio seconded. Motion carried unanimously.

7. Old Business.

None.

8. New Business.

Chair Horgan stated that the next Planning Board meeting will be held on Wednesday, December 16, 2020 at 7:00 p.m.

9. Adjourn.

There being no further business, Ms. Murray moved to adjourn the meeting. Mr. Stewart seconded. The motion carried, unanimously, and the meeting adjourned at 8:54 p.m.

Respectfully Submitted,

Meghan Rumph
Recording Secretary