

APPROVED
MINUTES OF THE NEW CASTLE PLANNING BOARD
Wednesday, January 27th, 2021 – 7:00 p.m. (via Zoom)

Vote to continue until the February 24, 2021 meeting the Public Hearing for approval of a subdivision for applicant Agnes Palmer Revocable Trust, 34 Oliver Street, Map 16, Lot 40.

Public Hearing for a Conditional Use Permit for the applicant Thomas F. Smith Revocable Trust, for the property on Abigale Lane, Map 4, Lot 26-10 for construction of a new residence, driveway and deck some of which falls within the 100' tidal wetland setback and the 50' freshwater setback.

Discuss necessity of each PB member receiving copy of DES Wetland Permit Application for a project needing a Conditional Use Permit.

Public Hearing amending Zoning Ordinance 9.2.5.1.d Conditional Use Permit to update the reference to the Shoreland Water Quality Protection Act.

Public Hearing amending Zoning Ordinance 9.2.5.1.e Conditional Use Permit to eliminate the need to apply for a variance thru the ZBA for encroachments below the 50' wetland buffer and updating the reference to the Shoreland Water Quality Protection Act.

Public Hearing to amend Zoning Ordinance 9.2.5.1 to include instructions on appeals.

Public Hearing to eliminate Zoning Ordinance 9.2.9 and 9.2.10 and consolidate under Zoning Ordinance 11.2 Appeals.

Public Hearing on revising the Site Plan Review Regulations Section 5.3.2.1 to reference a corrected section of the Subdivision Regulations.

Public Hearing on revising the Subdivision Regulations Section 5.1.3.4.b to eliminate a reference to advertising costs.

Public Hearing on amending Site Plan Review Regulations 12.1 Schedule of Fees to revise fees for a minor site plan and a pre-application design review.

Public Hearing on amending Subdivision Regulations 11.1 Schedule of Fees to revise fees for a pre-application design review.

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

Members Absent: Bill Stewart.

Others Present: Russ Bookholz, Town Building Inspector/Code Enforcement Officer; John Chagnon, Ambit Engineering; Ken McDonald; Steve Riker, Ambit Engineering; Tom Smith, Nancy Vailas.

Chair Horgan called the meeting to order at 7:03 p.m. Noting a quorum, Chair Horgan indicated that the voting members are herself, Ms. Murray, Ms. Sofio, and Mr. Jones and Mr. Moodie. Mr. Hammer is an alternate.

1. Vote to continue until the February 24, 2021 meeting the Public Hearing for approval of a subdivision for applicant Agnes Palmer Revocable Trust, 34 Oliver Street, Map 16, Lot 40.

Chair Horgan announced that John Chagnon, engineer for the project, has requested to table the application to next month, as the Applicants have to go before the ZBA first. *Ms. Murray motioned to accept the request to continue the application of Agnes Palmer Revocable Trust, 34 Oliver Street, Map 16, Lot 40 until the February Planning Board meeting.* Ms. Sofio seconded. Motion carried unanimously.

2. Public Hearing for a Conditional Use Permit for the applicant Thomas F. Smith Revocable Trust, for the property on Abigale Lane, Map 4, Lot 26-10 for construction of a new residence, driveway and deck, some of which falls within the 100' tidal wetland setback and the 50' freshwater setback.

Steve Riker of Ambit Engineering presented a narrative describing how the proposal meets the requirements of Zoning Ordinance Section 9.2.5.2 for work within the 100 foot wetland buffer and 50 foot Class B wetland buffer. The project proposes residential development including the construction of a home, driveway, deck, walkway, retaining wall, utility connections and associated grading on an undeveloped residential lot with approximately 250 feet of shoreline along Lavengers Creek.

The property is lot 10 on Abigale Lane, and contains a partial gravel driveway and a sewer line to which the new residential structure will connect. The permit to put the driveway in and cross the wetland was done at the time of the subdivision. There is already a culvert and water line, which had to be extended to Mr. Smith's house. The buildable area is a trapezoidal figure.

Mr. Riker is a certified wetland scientist and did a wetland delineation of the site. The lot contains both Class A and Class B wetlands, and part of the lot abuts Secret Pond. Mr. Riker explained how wetland rules and buffers have changed since the Abigale subdivision was approved in 1999. At the time of the subdivision, the wetland buffer was 25 feet. The setbacks are preexisting and vested in the subdivision plan. The highest observable tide line (HOTL) has shifted slightly south of the previous location. The Secret Pond lines remain very similar as they were in the past. There was a wetland of lower topography that had been previously delineated but is no longer there. Mr. Riker noted that but for some area of temporary disturbance, the proposal is conforming with the HOTL. The property meets tidal setbacks.

John Chagnon of Ambit Engineering discussed property line setbacks. The proposed house is a

three bedroom, two story residence with a partial basement. The proposed driveway would be located horizontally and there would be a retaining wall that is an extension of the existing retaining wall put in to hold up the driveway. The proposed wall will allow for access and egress to the garage. The lot coverage totals to 12.1%, with the structure measuring 3,714 square feet and a building area of 10,756 square feet.

The grading will not be changed significantly. The driveway will be paved. Mr. Chagnon explained how the site raises up as one goes toward the garage, which allows for the house to be placed at an appropriate elevation. The lower level of the house will be cut into the slope, which will work nicely with the grading so there will not be a need for much additional fill. The finished garage slab will be at elevation 29.75 feet, which is slightly below the existing grade of the lot. Mr. Chagnon noted that the grade of the driveway will need to be raised in order to be serviceable. The amount of fill needed will be minimized by placing the retaining wall to provide vertical surface, which will eliminate the additional impact toward the resource by putting in side slopes. The hard edge of the retaining wall minimizes the amount of disturbance in the buffer zone. The retaining wall will be machine set and dry laid, and will be built with rocks taken from the site. Mr. Chagnon showed plans that depicted the temporary and permanent impact in the buffer zones.

The Conservation Commission held an on-site meeting on December 1 to review the plans. The Commission looked at the location of the proposed residence and asked questions about the plans. Mr. Chagnon stated that the Commission recommended approval of the proposed house as shown on the November 11, 2020 plans.

Russ Bookholz, Town Building Inspector, wanted to allow turning associated with emergency vehicles accessing the site. The site driveway was expanded to accommodate this request and allow an ambulance enough room to turn around at the end of the driveway. Chair Horgan asked about the change in the driveway design, and was concerned that it would be a large additional amount of pavement. Mr. Chagnon responded that the additional pavement is not as large, though the Conservation Commission did not recommend approval of the additional pavement section because it would increase the impervious surface area.

Ms. Murray asked for confirmation that the driveway is partly done and the water line is already in. Mr. Chagnon confirmed that the water line, sewer connection and driveway were all put in as part of the original approval. Ms. Murray requested more information about the sewer line. Mr. Smith explained that he tied his home into the sewer line in 1979, and connected the line on Lot 10 in Abigale Lane to the existing sewer line in 2000. Mr. Chagnon added that at the time of the subdivision, there was an easement to provide sewer connection to a future home.

Ms. Murray inquired about the wetlands area that no longer exists on the lot. Mr. Riker explained that this area of lower topography no longer meets the criteria to delineate wetlands. The Town requested an independent wetland scientist review Mr. Riker's wetland delineation. This independent wetland scientist, Mark West, agreed with Mr. Riker's assessment. Ms. Murray questioned whether wetlands can come back and if this needs to be considered in the construction. Mr. Riker explained the criteria for wetland classification. Hydric soils are the most reliable indicator of wetlands, and these take hundreds of years to develop. Mr. Smith added that

Dan Geiger charted the area in 2005 and did not classify that particular section as a wetland.

Ms. Murray asked about the retaining wall height, the elevation of the house, and if runoff would move toward Secret Pond. Mr. Chagnon stated that the top of the proposed retaining wall is at elevation 29.5 feet, and the ground is at elevation 24.5 feet. The wall will vary between one to five feet in height. The finished floor of the house will be at elevation 31 feet, and the top of the existing hill is at elevation 30 feet. The roof pitches to the north, east and west. Ms. Murray also asked whether the house would be high enough to deal with sea rise. Mr. Chagnon responded that the site itself is high enough and would be well above any impact from rising sea levels. Mr. Riker also presented a map that shows the wildlife habitat, as this is required by the DES.

Mr. Jones asked if the Conservation Commission gave approval of the application. Chair Horgan clarified that the application was approved but then there was a subsequent informal vote via email to discuss enlarging the driveway. While the Commission did not approve this, Chair Horgan noted that members did not have a full presentation and the Commission did not give a formal recommendation for the current plan that is before the Planning Board.

Mr. Bookholz explained the reason for the turnaround request. The driveway is narrow and windy, and on both sides it drops off between three to six feet. He must look at life safety when approving plans. Mr. Bookholz worked with Mr. Chagnon and Mr. Riker to come up with the best location for the turnaround. He noted that an ambulance requires a 54 foot turning radius to do a three point turn.

Mr. Jones wondered if there were plans to install fencing. Mr. McDonald responded that he and Mr. Smith have no intention of putting up any fences, and they do not want to interrupt the animals migrating and passing through. Mr. Jones also asked about the wetland buffer to the east. Mr. Chagnon explained that there is no setback to the pond in the east. The subdivision approval had a 25 foot buffer, and the 50 foot Class B buffer that exists now does not apply in this particular case because the buffers are grandfathered. Mr. Chagnon showed the building envelope which is the original grandfathered area.

Chair Horgan asked about the driveway being part gravel and part pavement. Mr. Chagnon stated that both are classified as impervious. The driveway is currently gravel and Mr. Smith has an easement over a small section coming off Abigale Lane, which will remain unpaved. The rest of the driveway will be paved. Chair Horgan asked about the previously impacted tidal buffer zone that was depicted in one of the maps that Mr. Riker presented. Mr. Riker explained that this shows the driveway, water and sewer lines that are already in place. Chair Horgan wondered if the retaining wall will minimize runoff that would otherwise go into the wetland. Mr. Chagnon responded that it will avoid impact to the buffer by eliminating the need for a side slope that would further intrude into the buffer. The side slope would be created with grading, which is a permanent impact.

Ms. Sofio noted that the regulations state that the Planning Board must have a decision from the Conservation Commission. She asked if the Commission's most recent informal review is sufficient. Chair Horgan felt that the Commission's input is sufficient. She emphasized that the Commission did not get to hear from Mr. Bookholz or the Fire Chief about the safety reason for

increasing the square footage of the driveway.

Chair Horgan opened discussion to the public at 8:12 p.m. Nancy Vailas voiced her support of the project as a direct abutter. She stated that Mr. Smith and Mr. McDonald have been very forthcoming with their plans. Mr. Smith added that the house on Lot 10 will not be sold and will be part of the family compound, with his sister and her husband residing there. Hearing no further comments, Chair Horgan closed the public hearing at 8:14 p.m. and brought discussion back to the Board.

Mr. Moodie asked if water runoff from the house and driveway has been addressed in the DES application. Mr. Chagnon explained that the DES looks at runoff more seriously when the impervious surface area exceeds 20%. In this case, the impervious area is only 12%, so the development is not a concern. There is enough buffer surrounding the house to absorb water, and there will be no gutters to concentrate the water. Filtration will occur in the 100 foot buffer before Lavengers Creek. To the south, the retaining wall will create a concentration point away from the resource.

Ms. Murray motioned to accept the proposal for a Conditional Use Permit for Applicant Thomas F. Smith Revocable Trust, for the property on Abigale Lane, Map 4, Lot 26-10, for construction of a new residence, driveway and deck per Ambit Engineering plans C1 dated 11/02/2020, C2 dated 12/18/2020, C3 dated 12/18/2020, C4 dated 01/04/2021, and D1 dated 12/18/2020, pending NHDES approval. Mr. Jones seconded. Ms. Murray, Ms. Sofio, Mr. Jones, Mr. Moodie and Chair Horgan all voted in favor. Motion carried unanimously.

3. Discuss necessity of each PB member receiving copy of DES Wetland Permit Application for a project needing a Conditional Use Permit.

Chair Horgan asked Board members for input on receiving copies of the full DES Wetland Permit Application for projects that need a Conditional Use Permit. Ms. Murray, Ms. Sofio and Mr. Moodie noted that they all look through the DES application materials, but digital copies would work. Chair Horgan concluded that she would ask for hard copies as needed. A hard copy will continue to be in each case file at the Town Hall.

4. Public Hearing amending Zoning Ordinance 9.2.5.1.d Conditional Use Permit to update the reference to the Shoreland Water Quality Protection Act.

Chair Horgan opened the public hearing at 8:55 p.m. and closed the hearing at 8:56 p.m. after hearing no comments from the public. *Chair Horgan motioned to make the following amendment to the Zoning Ordinance:*

9.0 OVERLAY ZONING DISTRICTS

9.2 WETLANDS CONSERVATION DISTRICT

9.2.5 Conditional Uses

9.2.5.1 Conditional Use Permit

9.2.5.1.d Site improvements or alterations to the surface configuration of the land proposed within Class A or B Wetland buffer or Tidal Lands buffers as set forth in Section 9.2.3.2, provided that such improvements or alterations have been approved by the ~~New Hampshire Comprehensive Shoreland Protection Act~~ **Shoreland Water Quality Protection Act** (RSA 483-B), as amended and provided that they satisfy all other requirements of Conditional Use Permits pursuant to Section 9.2.5.2.

Ms. Murray seconded. Ms. Murray, Ms. Sofio, Mr. Jones, Mr. Moodie and Chair Horgan all voted in favor. Motion carried unanimously.

5. Public Hearing amending Zoning Ordinance 9.2.5.1.e Conditional Use Permit to eliminate the need to apply for a variance through the ZBA for encroachments below the 50' wetland buffer and updating the reference to the Shoreland Water Quality Protection Act.

Chair Horgan spoke with Todd Baker, Chair of the New Castle ZBA, Town Attorney Keriann Roman, Russ Bookholz, Town Building Inspector/Code Enforcement Officer, and the Rockingham County Planning Commission planner and all agreed they saw no drawback to removing the requirement that an Applicant go before the ZBA for a variance for encroachments below the 50 foot wetland buffer. Chair Horgan added that protecting the wetlands is more in the purview of the Planning Board than the ZBA, and requiring applicants appear before the ZBA is an extra, expensive added step.

Chair Horgan opened the public hearing at 8:58 p.m. and closed the hearing at 8:58 p.m. after hearing no comments from the public. *Chair Horgan motioned to make the following amendment to the Zoning Ordinance:*

9.0 OVERLAY ZONING DISTRICTS

9.2 WETLANDS CONSERVATION DISTRICT

9.2.5 Conditional Uses

9.2.5.1 Conditional Use Permit

9.2.5.1.e Buildings or structures set back in excess of 50 feet from the edge of Class A or Class B Wetland or Tidal Lands ~~or which have received appropriate relief from the Zoning Board of Adjustment,~~ provided such buildings or structures have been approved by the ~~New Hampshire Comprehensive Shoreland Protection Act~~ **Shoreland Water Quality Protection Act** (RSA 483-B), as amended and provided that they satisfy all other requirements of Conditional Use Permits pursuant to Section 9.2.5.2.

Mr. Jones seconded. Ms. Murray, Ms. Sofio, Mr. Jones, Mr. Moodie and Chair Horgan all voted in favor. Motion carried unanimously.

6. Public Hearing to amend Zoning Ordinance 9.2.5.1 to include instructions on appeals.

Chair Horgan explained that she spoke with the Rockingham County Planning Commission

planner who recommended this amendment. Attorney Roman agreed that it would be a good addition to the Zoning Ordinance.

Chair Horgan opened the public hearing at 9:00 p.m. and closed the hearing at 9:00 p.m. after hearing no comments from the public. *Chair Horgan motioned to make the following amendment to the Zoning Ordinance:*

9.0 OVERLAY ZONING DISTRICTS

9.2 WETLANDS CONSERVATION DISTRICT

9.2.5 Conditional Uses

9.2.5.1 Conditional Use Permit: A conditional use permit may be granted by the Planning Board (RSA 674:21 II) for the following uses or alterations in the Wetlands Conservation District provided that all of the conditions listed in subsection 9.2.5.2 below are met. Conditional Use Permits may only be granted after review and recommendation by the Conservation Commission and may require the submission of such information as contained in the DES Wetland Bureau "Minimum Impact Expedited Application" as necessary and reasonable to determine that the proposed use will meet the conditions set forth below. Any person aggrieved by a Planning Board decision on a conditional use permit application may appeal to the Superior Court as provided in RSA 677:15. These Planning Board decisions cannot be appealed to the Zoning Board of Adjustment (RSA 676:5.III).

Ms. Murray seconded. Ms. Murray, Ms. Sofio, Mr. Jones, Mr. Moodie and Chair Horgan all voted in favor. Motion carried unanimously.

7. Public Hearing to eliminate Zoning Ordinance 9.2.9 and 9.2.10 and consolidate under Zoning Ordinance 11.2 Appeals.

Chair Horgan opened the public hearing at 9:05 p.m. and closed the hearing at 9:05 p.m. after hearing no comments from the public. *Chair Horgan motioned to make the following amendment to the Zoning Ordinance:*

9.0 OVERLAY ZONING DISTRICTS

9.2 WETLANDS CONSERVATION DISTRICT

~~*9.2.9 Appeals: Any order, requirements, decision or determination of the Planning Board made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.*~~

~~*9.2.10 Review Procedure: Any order, requirement, decision or determination of the Planning Board made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.*~~

11.2 APPEALS

Any order, requirements, decision or determination of the Planning Board made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5 or appealed to the Superior Court under RSA 677:15 as applicable.

Ms. Murray seconded. Ms. Murray, Ms. Sofio, Mr. Jones, Mr. Moodie and Chair Horgan all voted in favor. Motion carried unanimously.

8. Public Hearing on revising the Site Plan Review Regulations Section 5.3.2.1 to reference a corrected section of the Subdivision Regulations.

Chair Horgan opened the public hearing at 9:07 p.m. and closed the hearing at 9:07 p.m. after hearing no comments from the public. *Chair Horgan motioned to make the following amendment to the Site Plan Review Regulations:*

5.0 SITE PLAN REVIEW PROCEDURES

5.3 PROCEDURES FOR MINOR SITE PLAN REVIEW

5.3.2 Modified Procedure

5.3.2.1 Minor site plan review applications may be submitted, reviewed and approved at one or more Board meetings, except that no application shall be approved without due notice to abutters and the general public as specified in Section 5.2.2 above 5.2.3.3 of the New Castle Subdivision Regulations.

Ms. Sofio seconded. Ms. Murray, Ms. Sofio, Mr. Jones, Mr. Moodie and Chair Horgan all voted in favor. Motion carried unanimously.

9. Public Hearing on revising the Subdivision Regulations Section 5.1.3.4.b to eliminate a reference to advertising costs.

Chair Horgan opened the public hearing at 9:09 p.m. and closed the hearing at 9:09 p.m. after hearing no comments from the public. *Chair Horgan motioned to make the following amendment to the Subdivision Regulations:*

5.0 SUBDIVISION PROCEDURES

5.1 PRE-APPLICATION REVIEW (OPTIONAL)

5.1.3 Design Review

5.1.3.4.b fees to cover abutter notifications ~~and advertising costs~~,

Mr. Moodie seconded. Ms. Murray, Ms. Sofio, Mr. Jones, Mr. Moodie and Chair Horgan all voted in favor. Motion carried unanimously.

10. Public Hearing on amending Site Plan Review Regulations 12.1 Schedule of Fees to revise fees for a minor site plan and a pre-application design review.

Chair Horgan explained that the fees listed in the Site Plan Review Regulations and Subdivision Regulations are inconsistent. Chair Horgan proposed changes to the fees to make them more uniform.

Chair Horgan opened the public hearing at 9:19 p.m. and closed the hearing at 9:19 p.m. after hearing no comments from the public. *Chair Horgan motioned to make the following amendment to the Site Plan Review Regulations:*

12.0 FEES

12.1 SCHEDULE OF FEES

12.1 An application filed for site plan review shall be accompanied by a filing fee of \$250.00, plus \$50.00 for each 2,500 square feet of gross floor area of building above 5,000 square feet. An application filed for a minor site plan shall be accompanied by a filing fee of \$250. ~~or A~~ pre-application ~~for~~ design review request, shall be accompanied by ~~the~~ a filing fee of \$100.00.

Mr. Moodie seconded. Ms. Murray, Ms. Sofio, Mr. Jones, Mr. Moodie and Chair Horgan all voted in favor. Motion carried unanimously.

11. Public Hearing on amending Subdivision Regulations 11.1 Schedule of Fees to revise fees for a pre-application design review.

Chair Horgan opened the public hearing at 9:20 p.m. and closed the hearing at 9:20 p.m. after hearing no comments from the public. *Chair Horgan motioned to make the following amendment to the Subdivision Regulations:*

11.0 FEES

11.1 SCHEDULE OF FEES

11.1 An Application filed for a major subdivision (more than three lots) shall be accompanied by a filing fee of \$500 plus \$100 per lot (or dwelling unit in the case of a cluster development). An application filed for a minor subdivision (three or fewer lots), ~~or a pre-application for design review~~, shall be accompanied by ~~the~~ a filing fee of \$250. A pre-application design review request shall be accompanied by a filing fee of \$100. In addition, the applicant is responsible for required legal notices and may be responsible for other outside costs incurred by the Town.

Ms. Murray seconded. Ms. Murray, Ms. Sofio, Mr. Jones, Mr. Moodie and Chair Horgan all voted in favor. Motion carried unanimously.

12. Review and approve the minutes to the December 16, 2020 Planning Board meeting.

Ms. Sofio moved to accept the minutes as written for the Planning Board meeting on December 16, 2020. Mr. Moodie seconded. Ms. Murray, Ms. Sofio, Mr. Jones, Mr. Moodie and Chair Horgan all voted in favor. Motion carried unanimously.

13. Old Business.

None.

14. New Business.

Chair Horgan stated that the next Planning Board meeting will be held on Wednesday, February 24, 2021 at 7:00 p.m.

15. Adjourn.

There being no further business, Ms. Murray moved to adjourn the meeting. Mr. Moodie seconded. The motion carried, unanimously, and the meeting adjourned at 9:31 p.m.

Respectfully Submitted,

Meghan Rumph
Recording Secretary