

APPROVED
MINUTES OF THE NEW CASTLE PLANNING BOARD
Wednesday, February 24th, 2021 – 7:00 p.m. (via Zoom)

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

Public Hearing amending Zoning Ordinance 11.3 Fees to include language for professional reviews.

Public Hearing amending Building Code Ordinance introductory paragraph and Section 1 Code Adoption to reference the State of New Hampshire Building Codes.

Public Hearing amending Zoning Ordinance 5.4.2 Condominium Approval to clarify which application is required.

Public Hearing amending Zoning Ordinance 6.3 Marinas, Docks and Piers to bring the Ordinance in line with State law and regulations.

Discuss the topic of New Castle requiring applicants to meet the standard as set in the Density and Dimensional Regulations Chart in the Zoning Ordinance (Page Zone19 in the print version and Section 4.2.1.5) for Maximum Building Area per Lot.

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

Members Absent: Tom Hammer, Kate Murray.

Others Present: Beth Barnhorst, Ellen Bryan, Mary Ann Driscoll, Jane Finn, Brad Greeley, Peter Rice, Curt Springer, Conni White.

Chair Horgan called the meeting to order at 7:04 p.m. and informed attendees that the public body is holding an emergency meeting electronically pursuant to Executive Order 2020-04, Section 8, and Emergency Order #12, Section 3. Noting a quorum, Chair Horgan indicated that the voting members are herself, Ms. Sofio, Mr. Moodie, Mr. Jones and Mr. Stewart.

1. Vote to continue until the March 24, 2021 meeting of the Planning Board, 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 still have to go before the ZBA first. *Ms. Sofio*

motioned to accept the request to continue the application of Agnes Palmer Revocable Trust, 34 Oliver Street, Map 16, Lot 40 until the March Planning Board meeting. Mr. Jones seconded. Chair Horgan, Ms. Sofio, Mr. Moodie, Mr. Jones, and Mr. Stewart all voted in favor. Motion carried unanimously.

2. Public Hearing amending Zoning Ordinance 11.3 Fees to include language for professional reviews.

Chair Horgan explained that Section 11.3 would be a new section in the Zoning Ordinance. Mr. Stewart asked which Land Use Boards are included in the section. Chair Horgan responded that all Land Use Boards would be included as long as they are allowed by the State RSAs. She was unsure if the Conservation Commission would be included.

Chair Horgan opened the public hearing at 7:14 p.m. Curt Springer questioned whether this addition should be covered in the regulations dictated by the Planning Board or the Zoning Board of Adjustment. Chair Horgan stated that this is an addition to the Zoning Ordinance which the Planning Board has purview over. Hearing no further comments from the public, Chair Horgan closed the public hearing at 7:16 p.m.

Chair Horgan motioned to make the following amendment to the Zoning Ordinance:

11.0 Administration and Enforcement

11.1 ENFORCEMENT; FINES

11.2 APPEALS

11.3 FEES

Costs incurred by the Land Use Board in reviewing the application before it, including but not limited to engineering, environmental assessment, and legal review under RSA 676:4-b or RSA 676:5, as applicable, shall be paid by the applicant by placing an amount as determined by the Board in escrow in advance of Board review before final action will be taken on the application.

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

3. Public Hearing amending Building Code Ordinance introductory paragraph and Section 1 Code Adoption to reference the State of New Hampshire Building Codes.

Chair Horgan explained that this amendment was the request of Town Building Inspector Russ Bookholz. The old language was limited and every time the International Residential Code (IRC) was revised, the Town Building Code had to be amended because it referenced dates. Mr. Moodie thought this amendment was a good idea because the code tends to update every few years.

Ms. Sofio noted that she did not know the difference between the New Hampshire and

International Building Codes. Mr. Moodie explained that New Hampshire follows the International Building Code but with amendments.

Chair Horgan opened the public hearing at 7:22 p.m. Brad Greeley asked why the New Castle Building Code Ordinance even references International Residential Code. Mr. Moodie responded that the State uses the IRC with amendments. Hearing no further comments from the public, Chair Horgan closed the public hearing at 7:25 p.m.

Chair Horgan motioned to make the following amendment to the Building Code Ordinance:

BUILDING CODE

*Be it ordained by the Town of New Castle at its Town Meeting held on March 7, 1972, further amended by its Town Meeting held on June 27, 1975, its Town Meeting held on March 2, 1976, its Town Meeting held on April 1, 1978, its Town Meeting held on May 13, 1980, its Town Meeting held on May 11, 1982, its Town Meeting held on May 14, 1985, and its Town Meeting held on May 14, 1996, and its Town Meeting held on May 13, 2008, and at its Town Meeting held on May 13, 2014, **and its Town Meeting held on May 11, 2021** pursuant to the provisions of the New Hampshire Revised Statutes Annotated Chapter 156-A as amended that **New Castle follows the adopted State of New Hampshire Building Codes as amended.** ~~the 2009 issue of the INTERNATIONAL BUILDING CODE and the 2009 issue of the INTERNATIONAL RESIDENTIAL BUILDING CODE as amended is adopted for the Town.~~*

Section 1 Code Adoption

(a) ~~The 2009 International Building Code and 2009 International Residential Code are hereby adopted by reference for the Town of New Castle. (May 2008; May 2014)~~

*(a) **New Castle follows the adopted State of New Hampshire Building Codes as amended.***

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

4. Public Hearing amending Zoning Ordinance 5.4.2 Condominium Approval to clarify which application is required.

Chair Horgan stated that this amendment is to add language to clarify that subdivision approval is needed in order to create or convert a condominium, which was not clear before. Chair Horgan opened the public hearing at 7:28 p.m. Curt Springer spoke and felt that this was more than a housekeeping matter. He argued that the Zoning Ordinance does not cover subdivisions, and the subdivision regulations need to be made applicable to the Zoning Ordinance. Mr. Springer suggested putting something before the Town to modify the subdivision regulations to specify that it applies to condominiums per RSA 356-B:5. Chair Horgan noted that she discussed this amendment with Town Counsel and she did not see a reason to take it out of the Zoning

Ordinance. This change is to make it clear that to have a condominium, one must abide by all rules in the Subdivision section. Chair Horgan noted that at some point there may be further additions to the Subdivision Regulations. Mr. Springer felt that the Zoning Ordinance should not discuss Subdivision Ordinances, and that these should be kept separate from one another.

Hearing no further comments from the public, Chair Horgan closed the public hearing at 7:35 p.m.

Chair Horgan motioned to make the following amendment to the Zoning Ordinance:

5.4 CONDOMINIUM REGULATIONS

5.4.1 Authority and Purpose:

5.4.2 Condominium Approval

In any district, the creation or conversion to condominium ownership shall require a Subdivision approval from the Planning Board ~~approval~~ following a public hearing. Approval shall be granted only if all the following conditions are met by the petitioner at his expense:

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

5. Public Hearing amending Zoning Ordinance 6.3 Marinas, Docks and Piers to bring the Ordinance in line with State law and regulations.

Chair Horgan explained that this amendment would remove everything from the original Zoning Ordinance Section 6.3 and add new wording. The existing wording has been outdated by decisions of the State. Items listed in the Ordinance that were enforceable in the past by the Town are no longer under the Town's authority. The State has taken over all jurisdiction over docks, and towns do not have authority over anything that extends out into public waters. Chair Horgan added that this section has been carefully vetted by Town Counsel.

Chair Horgan opened the public hearing at 7:42 p.m. Mary Ann Driscoll spoke and urged the Board to hold on approving this amendment until townspeople are able to speak to Eben Lewis from the NHDES next month. She stated that there is a great deal of community support for New Castle to be able to weigh in on applications before the DES. According to Ms. Driscoll, there are at least five areas in DES wetlands applications where the Town can provide its input. She suggested tabling the proposed amendment to find other ways the Town can work with DES on these cases.

Ms. Driscoll explained that at a recent Select Board meeting, Mr. Stewart had noted that he was in contact with Mr. Lewis about ways New Castle could use its ordinances and Master Plan to have input in dock applications before the DES. Mr. Stewart stated that he did have a discussion with Mr. Lewis to get a better understanding of how the Town can and does interact with the State on applications. Mr. Lewis had agreed to have a meeting via Zoom in March to further discuss the interface between the Town and DES. Mr. Stewart felt that it will be helpful for people to know what is in the DES purview and what the Department looks at in making their decisions. He explained that there are specific rules and RSAs that govern piers, docks and

wharfs, and Mr. Lewis could explain what the DES looks at in these applications. Chair Horgan suggested holding the meeting with Mr. Lewis earlier since the Board is running up against deadlines to finalize these amendments before the annual Town meeting. She appreciated Ms. Driscoll's input about the Town being able to weigh in on aspects such as heritage, recreation, and visual quality in DES applications. Ms. Driscoll asked how the Conservation Commission comes up with their decision on these characteristics. She felt that it is important to have supporting education and training.

Conni White, Chair of the Conservation Commission, spoke. She pointed out that the reality is that the DES will pass nearly all dock applications because the Department does not want to get in a lawsuit. She works frequently with Mr. Lewis and noted that he appreciates input from people in Town. Ms. White also stated that it is extremely rare for the Executive Council to overturn a DES decision, as was the case in a previous dock application along Lavenger Creek.

Chair Horgan stated that the Planning Board's role is very limited, and the Board can only do what is permissible by State RSAs. Town Counsel has advised that the Board cannot lobby one way or another for the DES to take a certain position on cases. The Conservation Commission is the Board in town charged with providing input to the DES on docks. Chair Horgan explained that comments from the Town should go before the Conservation Commission, as the Planning Board cannot write a letter with its position to the DES.

Brad Greeley spoke and encouraged the Board to postpone making a decision on the proposed ordinance changes until the public can speak with Eben Lewis.

Beth Barnhorst expressed that while she understands that the Town's hands are tied because the DES has the final say in applications, she wonders if the Town can change RSAs to be stricter than the State. She shared concerns about the Town's characteristics changing. Chair Horgan responded that the Town can be stricter than the State in ordinances in which the Town has jurisdiction. Ms. Barnhorst explained how she wants to preserve the character of New Castle.

Mr. Jones stated that he understood the concerns about the changing characteristics of the town. Ms. Sofio pointed out that if there is a State statute that governs docks, then there is nothing the Town could do. The Town can legislate and have ordinances that fill in gaps if there is no State statute. The Master Plan for New Castle is where people can have input on what they want the Town to look like. Mr. Stewart noted that the Master Plan is from 2012 and is due to be reviewed. Chair Horgan added that the purpose of the Master Plan is to inform ordinances, and agreed that there should be a committee of people from town to look over the Master Plan.

Ms. Driscoll questioned whether it is time to ask for revision of the RSAs at the State level. She suggested working with Representative Kate Murray and Senator Tom Sherman.

Peter Rice agreed with Ms. Barnhorst that the Town's characteristics are changing, and he hoped the Planning Board could hold off on making a decision until people from Town can speak with Eben Lewis.

Ellen Bryan spoke in agreement with Ms. Driscoll. She pointed out the special island community

that is New Castle and how once we lose something, we cannot get it back. Ms. Bryan felt that the Town needs to take some action in the Master Plan or ask for an RSA change where the Town can preserve the heritage, feel, and look of New Castle. She urged the Town to preserve what it has and be thoughtful about the entity that enforces changes.

Curt Springer stated that the Town can have stricter rules than the State only if the State allows it. He shared that he has some issues with the proposed amendments to Section 6.3.1 of the Zoning Ordinance, and thought it gives the impression that the Town has a say over marinas, docks, and piers. Mr. Springer felt that it is cleaner for the Ordinance to be silent since the Town cannot regulate docks. He added that the Zoning Ordinance cannot tell the Conservation Commission what to say to the State. He agreed with most of the sentiments expressed by others, but does not believe that these sentiments can or should go in the Town Zoning Ordinance.

Chair Horgan agreed with Mr. Springer that this section of the Ordinance is basically reiterating State law. Hearing no further comments from the public, Chair Horgan closed the public hearing at 8:17 p.m.

Chair Horgan proposed postponing making any decision on wording an amendment to the dock ordinance. Ms. Sofio and Mr. Jones agreed in delaying further consideration of this part of the revisions. Mr. Moodie felt that the proposed change of language represents the facts as they are in the current situation. He did not believe that it would do harm to change the wording because it would make the Town Zoning Ordinance align with the current State law. He did not see an issue in accepting the proposed changes. Mr. Stewart asked about the Town's ability to hire experts or require an applicant to have a third party look at a particular application. Chair Horgan explained that the last public hearing has to be held at the March Planning Board meeting in order for the proposed amendments to be on the warrant article for the Town meeting in May. She stated that she would work with the Town attorney to see if any new wording is needed.

Mr. Stewart motioned to continue the public hearing for the proposed amendment to Zoning Ordinance 6.3 Marinas, Docks and Piers. Ms. Sofio seconded. Ms. Sofio, Mr. Moodie, Mr. Jones, Mr. Stewart and Chair Horgan all voted in favor. Motion carried unanimously.

6. Discuss the topic of New Castle requiring applicants to meet the standard as set in the Density and Dimensional Regulations Chart in the Zoning Ordinance (Page Zone 19 in the print version and Section 4.2.1.5) for Maximum Building Area per Lot.

Chair Horgan explained that the Town Building Inspector pointed out that in most towns, the way to limit what people can build is with setbacks and lot coverage. New Castle has a third limiting factor in reviewing the size of the interior of a home. Mr. Moodie felt that having this additional restriction slightly alters architects' drawings by keeping structures from being blown out, reducing the volume of a home, and keeping it more in the local vernacular. He liked having this restriction and would like it to remain in the Zoning Ordinance. Mr. Stewart asked why this section is being reviewed. Chair Horgan responded that Russ Bookholz had brought it up because he felt the chart was an unnecessary restriction. Mr. Bookholz believed that the lot coverage and setback restrictions were sufficient.

Chair Horgan stated that she spoke with several people about the Density and Dimensional Regulations Chart. She said that John Chagnon, an engineer with Ambit Engineering who works on many applications in New Castle, could only think of a few instances where this restriction has become an issue. He told Chair Horgan that if a person has a big enough lot, it does not have an impact, and only really impacts smaller lots. Mr. Chagnon acknowledged that it is a lot of work to come up with the figures from the Density and Dimensional Regulations Chart. He had a few recommendations to make this part of the Ordinance more reasonable, such as including only heated space and excluding basements.

Chair Horgan also discussed this topic with Rich Landry, who was strongly opposed to this standard in the Ordinance. Mr. Landry felt that this restricts what one can do on a lot. Chair Horgan shared that Mr. Landry had a difficult time finding a lot in Town to build what he wanted to build even though he could meet all requirements except for building area.

Chair Horgan spoke with Patty Cohen, who was on the Planning Board when this particular section of the Zoning Ordinance was created. Ms. Cohen stated that the Town wanted to limit the sense of overbuilding on a small lot. Mr. Jones added that he came from a town in Massachusetts that implemented a town house review board with the aim of preventing the town from consisting of enormous boxes. He would share some documentation with the Board on this subject. Mr. Moodie agreed that the purpose of the Density and Dimensional Regulations Chart is to prevent houses from becoming boxes by reducing the slope of the roof of the second or third floor.

Chair Horgan also talked with Todd Baker, Chair of the Zoning Board of Adjustment. Mr. Baker stated that it was rare that the building area alone would trigger an applicant to come before the ZBA. He felt that applicants typically had to come before the ZBA for a combination of issues such as setbacks. Mr. Baker believed that the Board only heard a few cases a year where volume was the sole issue. Chair Horgan noted that Mr. Baker did not feel that this is an irrelevant restriction, and it is reasonable to want to keep people from building a big box.

Chair Horgan stated she would like to include an example in the Ordinance to make it clear what the table is requiring. She explained that the overall aim of the Ordinance is to limit the bulk of a house on any lot in New Castle. This would contribute to preserving the special look and feel of New Castle, as most of the Town consists of small lots.

Jane Finn questioned whether the Chart would cover gambrel dormers. Mr. Moodie responded that this style of architecture is becoming more prevalent, and he did not think it would change it that much. He felt that the Chart does not restrict the style of the house, but rather the volume. Beth Barnhorst felt that if the Town lifts the restrictions it has now, people will continue to push the limits of what they can build. Curt Springer stated that it may not be clear what the purpose of this Ordinance is.

Mr. Stewart asked how closely the Density and Dimensional Regulations Chart is looked at with applications. Mr. Moodie explained that it does kick in occasionally, and felt that it works well and is fair.

Chair Horgan took a straw poll and concluded that Board members are not particularly in favor of eliminating this ordinance, and she will inform Mr. Bookholz that there is no desire on the part of the Planning Board to get rid of this restriction. Chair Horgan will request that Mr. Bookholz monitor how many cases get sent to the ZBA because of this restriction and how many of these cases get approved.

7. Review and approve the minutes to the January 27, 2021 Planning Board meeting.

Ms. Sofio moved to accept the minutes as written for the Planning Board meeting on January 27, 2021. Mr. Stewart seconded. Ms. Sofio, Mr. Moodie, Mr. Jones, Mr. Stewart and Chair Horgan all voted in favor. Motion carried unanimously.

8. Old Business.

None.

9. New Business.

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

10. Adjourn.

There being no further business, Ms. Sofio moved to adjourn the meeting. Mr. Stewart seconded. The motion carried, unanimously, and the meeting adjourned at 9:06 p.m.

Respectfully Submitted,

Meghan Rumph
Recording Secretary