

APPROVED
MINUTES OF THE NEW CASTLE PLANNING BOARD
Monday, April 5th, 2021 – 5:00 p.m. (via Zoom)

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

Public Hearing amending the Zoning Ordinance Section 2.3.13a Building Area Definition, to add clarification to the language and add a clarifying direction to the accompanying chart.

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

Members Absent: Kate Murray.

Others Present: Russ Bookholz, Town Building Inspector/Code Enforcement Officer; Ellen and Randy Bryan; Mary Ann Driscoll; Wally Mallett; Curt Springer; Donna and Paul Urbanek; Conni White.

Chair Horgan called the meeting to order at 5:00 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 Margaret Sofio, Tom Hammer, Lorne Jones, Bill Stewart, and herself. Iain Moodie is an alternate. Chair Horgan explained that this is a special meeting of the Planning Board for two continued Public Hearings for votes on proposed Zoning Ordinance changes in order to move them to a vote by the public at the Town Meeting on May 11, 2021.

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

Chair Horgan noted that after robust discussions at the meeting last month with the NHDES and Town Counsel, the Planning Board came up with a revised recommendation for Section 6.3 of the Zoning Ordinance. All of the existing Section would be eliminated, as it is a hinderance and cannot be enforced since it is not in compliance with State law. Paragraph 2 of the new Section 6.3.1 has been updated since the last Planning Board meeting.

Chair Horgan opened discussion amongst the Board. Ms. Sofio noted that she has municipal experience as a lawyer, and explained how New Hampshire is not a home rule state. Home rule states like Massachusetts allow towns to expand upon certain parts of the law that are not covered in State law. New Hampshire is not like this, so regardless of whether the Town votes for this proposed amendment, the State law will prevail. Changing the Zoning Ordinance will help guide residents with what they can and cannot do. Ms. Sofio stated that she wishes the

Town could have more control over docks. The NHDES is not required to take the Town's concerns into account; it is discretionary. She concluded that she is prepared to vote in favor of the changes.

Mr. Moodie shared that he was struck by how the Town has such little jurisdiction over docks and piers. He pointed out that the Conservation Commission does have jurisdiction of cases on land up until the highest observable tide line (HOTL). Chair Horgan noted that this is called out in the Conditional Use Permit section of the Town Ordinances.

Mr. Stewart felt that this is an important change that the Town should make. He appreciated that the Conservation Commission would be holding a public meeting for dock applications, as this will allow neighbors to know what is happening and enables communication over proposed plans and how a project will be done. He hoped that residents will use the Commission meetings as a tool for discussion. Chair Horgan agreed in that the Conservation Commission meetings give the Town an avenue to provide feedback to the NHDES. The DES is required to read everything submitted by the Commission, so this is a positive addition to the Ordinance.

Chair Horgan opened the public hearing at 5:18 p.m. Randy and Ellen Bryan of 34 Wentworth Road spoke. Mr. Bryan asked if the Master Plan has any effect on an application for a dock. Chair Horgan explained that the Master Plan is designed to give an overall vision of the Town. It informs the Town Ordinances, but cannot change or override anything in the Ordinances. Mr. Bryan asked how land ordinances affect the placement or eligibility for a dock. Chair Horgan responded that land ordinances regulate access on land to the dock, such as ramps or steps leading to the dock. The land ordinances also regulate sea walls and their repair, including anything that would be constructed on the land or that would require heavy equipment. Section 9.2.5 of the Zoning Ordinance provides further information. Mr. Bryan asked about the projection of property boundaries. Chair Horgan stated that this is covered by State law and is no longer within the Town's purview. State law requires 75 feet of frontage for a dock. Frontage is not regulated by the Town. Chair Horgan added that the Town has no right to deny access to a dock, and waterfront landowners have a right to have a dock and get to the dock. The Town can weigh in on the construction of the structure leading to a dock. Mr. Bryan expressed frustration that the State has taken over whether a person has a right to a dock, and felt that this could detract from the character of New Castle.

Donna and Paul Urbanek of 49 Laurel Lane spoke. They reiterated the request to postpone passing the warrant article in order to allow more time to study the potential impact on wetlands, and for the Master Plan to be updated. Ms. Urbanek felt that after the Master Plan is updated, then the Town could delete sections of the Ordinance if they do not comply with the Plan. She noted that the State does look for input from municipalities, specifically for applications within the 100 foot tidal buffer zone. Ms. Urbanek stated that the wetland statutes in RSA 482-A spell out a clear role for Conservation Commissions, but the proposed re-wording of Section 6.3 of the Town Zoning Ordinance does not take this into account. She expressed concern that the NHDES allows applicants to waive certain requirements, such as the length of a dock. She added that the Planning Board should allow residents and Board members time to research and consider the consequences that unrestricted permitting of docks will have on the community and wetlands. Ms. Urbanek concluded that residents have a say as well.

Mr. Stewart commented that by right, everyone is entitled to a six foot wide accessway through the buffer zone to a dock. While he understands the Urbaneks' concerns about the Ordinances, he reiterated that the current Ordinance is not enforceable. The revision is set up the way it is so that the Town can provide input to the State through public meetings held by the Conservation Commission. The Town has control over cutting and structures within the 100 foot tidal buffer zone, and this proposed revision does not change that piece of the Ordinance. The State RSAs and DES rules are very explicit about what the Town role is, regardless of what the Town Ordinance says. Ms. Sofio pointed out that subsection 2 in Section 6.3.1 is directly from the NH Statutes.

Chair Horgan acknowledged that many people wanted to wait to update the Ordinance until the Master Plan is re-done. The planning process to re-do the Master Plan will begin right after the annual Town meeting this year. If the Town waits until the Master Plan is updated, then the entire Section 6.3 would be left on the books for another year, yet it cannot be enforced. Chair Horgan emphasized that this Section cannot be relied upon or enforced because it is not in line with State laws. The Town can always act on additional changes next year, if warranted, once the Master Plan is updated. Chair Horgan stated that the Town has no right to put anything stricter on the books, and if DES wants to waive a requirement of a dock application, that is within the State's purview.

Curt Springer noted that the purpose of the Master Plan is to set down the best and most important future developments of areas that are under the Planning Board's jurisdiction, such as preserving and enhancing the unique character of New Castle. He stated that people should not assume that things can be added in the Master Plan that cannot be driven by Ordinances. He cited how RSA 482-A diminishes a town's authority. Chair Horgan clarified that the Planning Board does have a say about work above the HOTL and in the 100 foot buffer.

Mary Ann Driscoll spoke about how this proposed revision to the Zoning Ordinance is a great opportunity for the public to have input through the Conservation Commission public meetings. She expressed concern that the addition was done quickly and wondered if it could be more robust to ensure that it is clear what the Conservation Commission reviews, particularly if the Commission does not have a clear definition of what they should be looking at. Ms. Sofio responded that the revision was done quickly because it was pulled directly from the RSAs. Chair Horgan added that the revision may appear to have been done quickly, but it was not done ineptly, as Town Counsel Keriann Roman had been listening carefully to all the town input and had been working with Chair Horgan before the meeting as well. Chair Horgan felt that the revised Ordinance is as encompassing as the Town can make it, and it is well-informed and well-advised.

Mr. Stewart clarified that the Conservation Commission holds a public meeting, not a public hearing. This means that abutters will not be directly notified, although the meeting will be posted publicly in multiple places. Conni White, Chair of the Conservation Commission, posts notice of meetings as well. Mr. Stewart added that abutters are required to be notified in any dock application to the State. Mr. Moodie commented that the dock application process is very difficult and thorough, and all aspects and potential impacts of a dock are considered by the

DES. He felt that it was unlikely that any dock application would go through to the DES without the Conservation Commission receiving the application. Hearing no further comments from the public, Chair Horgan closed the public hearing at 5:51 p.m.

Chair Horgan motioned to make the following amendment to the Zoning Ordinance and to move this amendment to a vote of the Town on May 11, 2021. Strike through means deleted text, bolded and underlined text means added text.

6.3 MARINAS, DOCKS AND PIERS

~~6.3.1 Marinas, boatyards, yacht clubs and permanent or seasonal docks, piers, wharves, floats, and their accessory structures shall be permitted by Special Exception. Request for a Special Exception under this provision shall be made to the Board of Adjustment prior to applicants filing for approval by federal and/or state regulatory agencies. Special Exceptions under this section shall be granted only after review and recommendation by the Conservation Commission to the Board of Adjustment. However, the Board of Adjustment is not bound by the decision of the Conservation Commission.~~

~~6.3.2 Such exceptions shall be found by the Board of Adjustment to comply with the requirements of Section 4.3 Special Exceptions and the following review criteria:~~

- ~~1. General. In reviewing applications for Special Exceptions under this section, the Board of Adjustment shall balance private property interests with the public's interest in its tidal shore by fostering the right of people to the natural, scenic, historic and aesthetic qualities of their environment and protecting the public health, safety and general welfare as it may be affected by any of the projects described in 6.3.1 above.~~
- ~~2. Specific Review Criteria. The specific review criteria with respect to docks, piers, wharves and floats are:~~
 - ~~1. All docks, piers, wharves and floats must be designed to minimize visual impact and to avoid degrading the environment;~~
 - ~~2. All docks, piers, wharves and floats must be designed so as not to represent a hazard to navigation, including that of fishing craft, small pleasure boats and kayaks, or to obstruct public rights of passage or access;~~
- ~~3. All docks, piers, wharves and floats must be designed so as to minimize to the greatest extent possible, any impact on the value of abutting properties;~~
- ~~4. Only one dock, pier, wharf or float is permitted for each property;~~
- ~~5. A dock, pier, wharf or float must not be located within 20 feet of any abutting property lines on land or the imaginary extension of these lines over the surface waters of any abutter to the property from which it is proposed to have a dock, pier, wharf, or float. To the degree practicable, these structures should be located in the center of the owner's property and the imaginary lines extended over the surface waters from the center of that property;~~
- ~~6. The maximum permissible width of a dock, pier or wharf is 6 feet. The maximum area of a float is 400 square feet;~~
- ~~7. The maximum permissible height of a dock, pier or wharf is 5 feet above mean high water except where the possibility of extreme storm tides requires a higher level;~~
- ~~8. The property from which it is proposed to establish docks, piers, wharves or floats must have a minimum of 60 feet of tidal shoreline frontage;~~

- ~~9. In determining the maximum allowable length of a pier, the Board of Adjustment shall consider the property's shoreline frontage, the visual impact of the proposed pier, avoidance of damage to the environment, the width of the waterway, the location of the proposed docks and piers on the waterway, the length of the neighboring docks and piers and the protection of neighboring property values. The maximum aggregate length of a dock, pier, wharf and float as measured from the seaward face to mean high water line shall be as determined by the Board of Adjustment but may exceed 100 feet only after a finding that unusual circumstances exist.~~
- ~~10. All structures constructed under these criteria shall be maintained. Maintenance shall be such that the structure shall conform to reasonable safety standards. Failure to maintain the structure for five years in a condition that is functional and intact constitutes abandonment. The owner will be obligated to restore or remove the abandoned structure.~~
- ~~3. Requirements for Marinas: Marinas shall be permitted subject to a finding that all of the following conditions are met:~~
 - ~~1. The marina is a part of a planned unit development consisting of at least ten acres of land and least 1,000 feet of shoreland;~~
 - ~~2. It is designed so as to result in the least amount of alteration of water area;~~
 - ~~3. Supporting marine facilities such as winter storage yards are located inland;~~
 - ~~4. Pilings or cribbings are used to elevate marine structures rather than solid fill;~~
 - ~~5. Pump out facilities for boat sewage are provided and connected to the municipal sewer system.~~

6.3 DOCKS

6.3.1 Private Docks and Water-Related Structures (Personal Use):

- 1. All docks, wharves, piers and other water-related structures are permitted by the New Hampshire Department of Environmental Services, fall under state jurisdiction, and shall comply with the requirements and restrictions of RSA chapter 482-A and Administrative Rules Env-Wt, as may be amended. This includes, but is not limited to, the requirements that:**
 - a. The applicant for a permit under RSA chapter 482-A submit an original plus 4 copies of a completed application form and all required attachments under RSA chapter 482-A and Administrative Rules Env-Wt to the Town Clerk. The Town Clerk shall send a copy of the form and attachments to the Selectboard, the Planning Board, and the Conservation Commission, and shall retain one copy to be made accessible to the public.**
 - b. The applicant shall provide written notice of the proposed project to all abutters, as defined in the Administrative Rules Env-Wt 101 (as may be amended), and as required by RSA 482-A:3, unless exempted in such rules.**
- 2. In making its recommendations, the Conservation Commission shall consider protection of water quality, protection of wildlife habitats, protection of plant species, and any other relevant environmental information, which may include the natural/environmental heritage of the area. The Conservation Commission shall hold**

a public meeting with public input on the application to provide a non-binding recommendation to NH DES, which has jurisdiction over permitting.

6.3.2 Commercial Docks and Water-Related Structures:

1. A proposal for commercial use of water-related structures, including but not limited to condominium docking facilities, yacht clubs, or marinas, must comply with all of the requirements in Section 6.3.1, must be a use that is permitted in the underlying use district; and shall be subject to Site Plan Review by the Planning Board.

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

2. Public Hearing amending the Zoning Ordinance Section 2.3.13a Building Area Definition, to add clarification to the language and add a clarifying direction to the accompanying chart.

Chair Horgan explained that there was great discussion and input received at the last Planning Board meeting. She stated that this amendment to the current Zoning Ordinance is to clarify the language as written and to amend the accompanying chart to include an example in the definitions section.

Mr. Moodie felt that the amendment clarifies some of the language, but the actual definition of buildable area or gross floor area is still unclear. For example, it is not clear if utility closets count toward the buildable area. He noted that he would work with Town Building Inspector Russ Bookholz to make these definitions easier to understand. Mr. Moodie added that the example is a good way to find the square footage of the actual lot size, but it becomes tricky when applying the Ordinance to a specific house. He pointed out that the proposed amendment does not change any restrictions.

Mr. Jones commented that part of the Density and Dimensional Chart should be revised to 4,001 square feet instead of 4,000sf – 9,000sf in order to be grammatically correct. While Board members agreed, Chair Horgan noted that this was already posted, and the Board cannot be making significant changes now. She expressed concern that given the stage the Board is at in the process, she is not entirely comfortable making this change. Ms. Sofio felt that it would be a de minimis change that would make the Ordinance more accurate. Mr. Hammer stated that everyone rounds up in the calculations anyways, so it would not make a difference. Mr. Jones responded that he did not feel strong enough about changing the figure to 4,001 square feet, and agreed that the Board should continue with the revised wording as written.

Chair Horgan opened the public hearing at 6:07 p.m. Wally Mallett of 34 Main Street asked whether this amendment would impact grandfathered lots. He asked clarifying questions about lot size and the buildable area allowed. Chair Horgan stated that whatever is grandfathered would not be impacted by the Ordinance change.

Hearing no further comments from the public, Chair Horgan closed the public hearing at 6:11

p.m. and brought discussion back to the Board. Chair Horgan stated that she spoke with Mr. Bookholz, who will keep an eye on future applications to see if the Ordinance is working as intended.

Chair Horgan motioned to make the following amendment to the Zoning Ordinance and to move this amendment to a vote of the Town on May 11, 2021. Strike through means deleted text, bolded and underlined text means added text.

ZONING ORDINANCE

2.0 Definitions

2.3 DEFINITIONS

2.3.13a Building Area

Building Area: The gross floor area of all buildings on a lot including garages, detached buildings and covered porches and including 50% of the area of walkout basements, but excluding patios; and decks. ~~and~~ Storage sheds of less than 80 square feet are also excluded.

Example for a 15,000 Square Foot Lot:

$$\begin{array}{r}
 15,000 \\
 - \underline{4,000} \text{ (50\%)} \text{ ----} \rightarrow 2,000 \\
 11,000 \\
 - \underline{5,000} \text{ (25\%)} \text{ ----} \rightarrow 1,250 \\
 6,000 \text{ (15\%)} \text{ ----} \rightarrow 900 \\
 \hline
 4,150 \text{ Square Feet Max Building Area}
 \end{array}$$

4.0 District Regulations

Density and Dimensional Chart

Maximum Building Area per Lot	1st 4,000sf of lot: -50% of lot area							
(See Ex in Def Section)	4,000sf – 9,000sf of lot area: -25% of area	Same as RESIDENTIAL DISTRICT	Same as RESIDENTIAL DISTRICT	Same as RESIDENTIAL DISTRICT	Same as RESIDENTIAL DISTRICT	Same as RESIDENTIAL DISTRICT	Same as RESIDENTIAL DISTRICT	Same as RESIDENTIAL DISTRICT
	Lot area above 9,000sf.: -15% of area							

Mr. Hammer seconded. Ms. Sofio, Mr. Hammer, Mr. Jones, Mr. Stewart and Chair Horgan all

voted in favor. Motion carried unanimously.

3. Old Business.

None.

4. New Business.

Chair Horgan stated that the next Planning Board meeting will be held on April 28, 2021 at 7:00 p.m.

5. Adjourn.

There being no further business, Chair Horgan moved to adjourn the meeting. Mr. Jones seconded. The motion carried, unanimously, and the meeting adjourned at 6:19 p.m.

Respectfully Submitted,

Meghan Rumph
Recording Secretary