

**APPROVED**  
**MINUTES OF THE NEW CASTLE PLANNING BOARD**  
**Wednesday, April 28<sup>th</sup>, 2021 – 7:00 p.m. (via Zoom)**

**Public Hearing for approval of a subdivision for 1 lot into 2 and associated subdivision requirement waivers for applicant Agnes Palmer Revocable Trust, 34 Oliver Street, Map 16, Lot 40.**

**Members Present:** Darcy Horgan, Chair, Iain Moodie, Kate Murray, Margaret Sofio, Bill Stewart.

**Members Absent:** Tom Hammer, Lorne Jones.

**Others Present:** Kevin and Deb Callahan; John Chagnon, Ambit Engineering; Amy Gworek; Monica Kieser, Hoefle, Phoenix, Gormley & Roberts, P.A.; Cille Marvin; Elaine Nollet; Sam Palmer; Timothy Phoenix, Hoefle, Phoenix, Gormley & Roberts, P.A.; Curt Springer.

Chair Horgan called the meeting to order at 7:03 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, Kate Murray, Iain Moodie, Margaret Sofio, and Bill Stewart.

**1. Public Hearing for approval of a subdivision for 1 lot into 2 and associated subdivision requirement waivers for applicant Agnes Palmer Revocable Trust, 34 Oliver Street, Map 16, Lot 40.**

John Chagnon of Ambit Engineering presented the revised plans. The Applicants have come before the Planning Board several times in the past year to discuss the proposal and get feedback. He explained that the new plans cover three areas that were previously of concern. First, the Town Building Inspector wanted the curve in the proposed right of way softened, which has been accommodated. Second, the path of the right-of-way was altered so that the barn/garage structure in front complies with the 20 foot setback. Third, the tennis court that is on the proposed lot 1 will be removed. Mr. Chagnon noted that the private right of way, which begins at Oliver Street, will be a minimum of 30 feet wide and have 100 feet of frontage for the proposed lot 2, which has the existing house.

Mr. Chagnon showed plans for the private right of way, which is a proposed street under the New Castle Ordinance. He stated that the neighboring Callahans had been concerned about runoff in the drainage pocket. Mr. Chagnon explained that the gravel edge of the existing drive is being held and the right of way line is placed 35 feet to the east in order to address the drainage concerns. The right of way will taper to meet the existing driveway. A few trees will need to be removed to create the new gravel drive. Mr. Chagnon spoke with the Town Building Inspector, who agreed that the existing gravel turnaround is suitable for an ambulance.

The proposed lot 1 will be 9% impervious surface area, and the proposed lot 2 will be 17% impervious. Both lots are conforming in area and impervious coverage. Lot 1 will have plenty of buildable area to construct a home in the future, according to Mr. Chagnon.

Mr. Chagnon presented a roadway plan and profile, and showed an exhibit with grades in the center line of the gravel drive. The proposed grades have been crafted to match the existing grade as close as possible and to minimize disturbance. Mr. Chagnon showed cross sections of the right of way areas as well. He noted that the Applicants would only pave an apron off Oliver Street to prevent the tracking of gravel onto the public street. He added that there is an existing low spot between the gravel drive and the abutting driveway. The road will slope entirely to the east away from abutting properties, which will cause the drainage to go onto the proposed lot 1. Mr. Chagnon also presented a plan for drainage mitigation and control, which will involve draining away from abutters and down onto lot 1. There will also be a 686 cubic foot rain garden, which would be able to handle, capture, and treat the flow generated. The rain garden was sized taking into account that there will be a future home on lot 1. The removal of the tennis court will also help significantly reduce the impervious surface area. Mr. Chagnon stated that all abutters were re-noticed for this Public Hearing.

Ms. Murray asked about the drainage being directed toward the proposed lot 1, and whether this would impact the abutting Nollet property. Mr. Chagnon responded that the tennis court currently drains toward the Nollets, and with that being removed, there will be a decrease in impervious surface and runoff. Also, when putting in the road and grading to direct water, there will be the ability to move water down the road to the point where it will go to the rain garden. Mr. Chagnon also pointed out a high point ridge that separates drainage from the marsh. Chair Horgan asked for neighbors' input on the drainage issues in this area. Elaine Nollet shared that the lawn on her property is usually very wet. Cille Marvin commented that the edge of her property has become so wet and damp that they have lost trees. Mr. Chagnon responded that what neighbors are experiencing will not be made worse by the subdivision, and if anything, the drainage issues may be improved because of the removal of the tennis court and the addition of the rain garden.

Mr. Chagnon explained that the project will decrease impervious surface area, which will decrease the amount of water that will drain onto neighboring lots. The rain garden will encourage water to go back into the ground and soil, which will increase the amount of infiltration. The size of the rain garden is dictated by water quality volume, which is the first flush of a rain event. Runoff from the proposed lot 2 will flow as it does now. Mr. Chagnon stated that they are mainly taking care of the stormwater implications that arise from the road creation, and the primary purpose of the rain garden at this time is to accommodate the new road that will be constructed. Mr. Moodie felt that the water runoff situation will be improved from what currently exists. He pointed out that the abutters downstream experience natural drainage of the area, and the rain garden should accommodate water on site. Mr. Moodie believed that Mr. Chagnon's work has addressed the conditions for a subdivision. The rain garden can be readdressed when a house is eventually built on the proposed lot 1, but right now, the garden is being overbuilt in anticipation of a moderate size house.

Chair Horgan had questions about the requested waivers and the driveway easement and

maintenance form that was submitted. Mr. Chagnon acknowledged that the form did not incorporate the suggested changes that Town Attorney Keriann Roman had, and he would work on updating this document later in the process. Chair Horgan noted that Attorney Roman would like to see two separate documents, with one being the conveyance of the easement of the road and the other being the road maintenance agreement between the owners of the two properties.

Chair Horgan asked if the square footage of the access and utility easement had to be used in order for the lot 1 area to meet the required minimum lot area size of 20,000 square foot. Mr. Chagnon confirmed that this square footage was used in the lot area calculation for the proposed lot 1. Lot 1 will be connected to Town water and sewer. Mr. Chagnon also showed where the 100 feet of frontage is for lots 1 and 2 on the plans. Chair Horgan pointed out that lot 2 falls in a special flood hazard area, and asked if the Applicants have met the criteria in Section 7.2.10 in the Subdivision Regulations. Mr. Chagnon responded that lot 2 is partially in the flood hazard area, and the subdivision plan does not involve any work in the flood hazard area, so no special permits or waivers are needed.

Chair Horgan inquired as to when the tennis court will be removed. Mr. Chagnon stated that the Applicants would like to keep the court as long as possible, as it is an asset to the neighborhood. The family does not need to build on lot 1 at this time, so they seek the possibility of an approval with a time frame to eliminate the tennis court. He explained that the family's situation has changed and they do not need the two lots created at this time. However, they would like to get the subdivision approved so that they know they can execute those plans at some point in the future. This would affect the value of the estate if the family were to have an appraisal. Mr. Chagnon asked whether there was a way to protect the family by vesting the approval. For example, he suggested the Planning Board could determine the active and substantive completion, such as when trees are cut to build the road. Mr. Chagnon explained how it is a financial burden to the family to pay for the gravel drive and eliminate the tennis court at the same time. Chair Horgan responded that the Planning Board cannot approve a subdivision that creates lot 1 with the tennis court remaining because it creates a nonconforming lot due to the impervious surface area. The Applicants would have to go before the ZBA to get a variance, which would be a big ask.

Mr. Chagnon stated that the subdivision approval would protect the family in case of future zoning changes. He did not believe there would be harm in leaving the lot as it is now with the tennis court until a house is built there. Mr. Stewart felt that it made sense to have the tennis court remain for the time being if the Planning Board could make this a condition of approval. Mr. Moodie added that a subdivision always is granted first and then the road is built. He stated that there must be a statute that puts a time limit on when construction must take place. Chair Horgan cited Section 5.2.7 of the Subdivision Regulations, which discusses conditional approval with conditions that must be met within 90 days of the approval being granted. Ms. Sofio was sympathetic for the family's desire to have the subdivision approved given what is occurring in probate, but felt that the Board needed to get the opinion of Attorney Roman to be sure that any conditions of approval are feasible and legal.

Chair Horgan opened the public hearing at 8:09 p.m. Curt Springer questioned whether Mr. Moodie should recuse himself from this case given that he is an abutter to the Applicants. Chair

Horgan responded that it is up to the individual Planning Board member to decide whether he or she can be a fair and impartial judge. Mr. Moodie stated that it is his intention to not vote on the case. Chair Horgan added that Mr. Moodie is an alternate member and was needed to have a quorum for this meeting.

Attorneys Timothy Phoenix and Monica Kieser were present on behalf of Kevin and Deb Callahan. Attorney Phoenix stated that the question of timing needs to be balanced with the Town and the public to ensure the project is not dragged on. He cited RSA 674:39, which provides for a five year exemption for zoning changes after an approval is granted. This exemption requires that there be active and substantial development, which is typically the building of a road, within 24 months of the approval grant. Attorney Phoenix added that some towns set a limit that if the conditions of approval have not been met within a period of time, such as 18 months, then the approval would expire.

Attorney Phoenix noted that the Callahans do not have a problem with the Palmers subdividing their lot, but they want to have a clean, nice neighborhood. He presented recent pictures of the view from the Callahans' home, which showed barrels and old tires around the lot, along with many piles of brush that Attorney Phoenix said are in danger of catching fire. He noted that Russ Bookholz, Town Building Inspector and Code Enforcement Officer, examined the lot and informed Attorney Phoenix that one unregistered vehicle is allowed. Attorney Phoenix argued that the large van the Palmers have should be considered derelict. He pointed out that Section 5.2.7.3 of the Subdivision Regulations specifies that the Board may impose fair and reasonable stipulations to their subdivision approval. He stated that the lot condition is a threat to the public health, safety and welfare, and the way the grounds of the proposed lot 2 are being kept is not conserving the value of the land.

Attorney Phoenix presented a list of conditions that the Callahans would like before any subdivision approval is recorded. He asked if all the brush in the proposed right of way will be removed. Mr. Chagnon was unsure of where these piles are located. Chair Horgan noted that it is not in the Planning Board's purview to hold out an approval for a subdivision because of conditions on the lot that fall under the jurisdiction of the Code Enforcement Officer. She added that any safety concerns should be addressed with the Code Enforcement Officer and/or Town Fire Department.

Kevin Callahan stated that Attorney Phoenix articulated the Callahans' concerns about the abutting properties. He added that they are concerned about the trees along the right of way coming into Oliver Street, which runs close to their fence line. Every year the Callahans have to hire a tree company to trim the trees in order to maintain access to their driveway, and this is a big cost that they are incurring. Mr. Chagnon responded that the plan is for the trees to remain, and they are avoiding cutting trees down because they do not want to introduce drainage issues. He clarified that the extent of the proposed right of way are the boundary lines that go to the property line of the Callahans.

Attorney Phoenix asked where the cemetery issue stands. Chair Horgan responded that it was mentioned previously but no one has submitted paperwork indicating anything further about the cemetery. She said that State law would prevail should a cemetery be discovered.

Elaine Nollet shared that she is in support of the Palmers' subdivision and understands their desire to leave the tennis court as long as possible. She stated that she mentioned the wetness on the proposed lot 2 because she wondered whether the proposed driveway turnaround would cause additional water overflow. Mr. Chagnon responded that the water runoff would remain as it is now. Hearing no further comments from the public, Chair Horgan closed the public hearing at 8:30 p.m. and opened discussion back up to the Board.

Mr. Stewart mentioned that the wetland on the Palmers' property has been the site of ongoing work by the Town to manage drainage and avoid fresh water inundating the area. The Town put in a culvert and is working to ensure that the saltwater wetland can continue to exist and thrive.

Chair Horgan went over the waivers requested by Mr. Chagnon. She noted that the Applicants do not need the requested waiver from Section 6.2.4.21 of the Subdivision Regulations, but they would need a waiver for Section 6.2.4.12. She also stated that Section 7.2.1.2 would require a waiver instead of Section 7.2.1.1. Chair Horgan did not believe that the waiver request applied for Section 7.2.1.3 either. Mr. Chagnon pointed out that the Building Inspector should weigh in on this Section because he believed that it was requested by him. Chair Horgan said she would consult with the Building Inspector on this point. Chair Horgan asked if the Applicants meet all standards in Section 7.2.2 other than 7.2.2.6. Mr. Chagnon responded that he believed all standards in that section were met, and he would talk with Mr. Bookholz about Section 7.2.2.6.

Chair Horgan stated that in order for the application to be considered complete, she would like to see revised easement and maintenance agreement documents and review the latest road plan and profile set of plans that were just submitted at the meeting this evening with Mr. Bookholz. She added that the outstanding legal bill needs to be paid and additional funds will need to be placed in escrow for the continued legal review. Mr. Chagnon suggested that Attorney Roman reach out to the Applicants to further discuss the proposed timeline of the subdivision. Mr. Moodie read from Section 8.1.3 of the Subdivision Regulations, which discusses performance and maintenance guarantees. He suggested that as an alternative to a performance bond, the Board could grant conditional approval without officially signing it until all conditions are met.

*Chair Horgan motioned to continue the Public Hearing for the subdivision application of Agnes Palmer Revocable Trust, 34 Oliver Street, Map 16, Lot 40 until the May 26, 2021 Planning Board meeting. Ms. Murray seconded. Mr. Stewart, Ms. Murray, Mr. Moodie, Ms. Sofio and Chair Horgan all voted in favor. Motion carried unanimously.*

**2. Review and approve the minutes to the regular monthly Planning Board meeting on March 24, 2021, the joint Planning Board session with Eben Lewis on March 24, 2021, and the special Planning Board meeting on April 5, 2021.**

*Ms. Sofio moved to accept the minutes as written for the regular monthly Planning Board meeting on March 24, 2021. Mr. Moodie seconded. Mr. Stewart, Ms. Murray, Mr. Moodie, Ms. Sofio and Chair Horgan all voted in favor. Motion carried unanimously.*

*Ms. Sofio motioned to accept the minutes as written for the joint Planning Board session with Eben Lewis on March 24, 2021. Mr. Moodie seconded. Mr. Stewart, Ms. Murray, Mr. Moodie, Ms. Sofio and Chair Horgan all voted in favor. Motion carried unanimously.*

*Ms. Sofio motioned to accept the minutes as amended for the special Planning Board meeting on April 5, 2021. Mr. Moodie seconded. Mr. Stewart, Ms. Murray, Mr. Moodie, Ms. Sofio 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 Wednesday, May 26, 2021 at 7:00 p.m.

### **5. Adjourn.**

There being no further business, Mr. Moodie moved to adjourn the meeting. Ms. Murray seconded. The motion carried, unanimously, and the meeting adjourned at 9:05 p.m.

Respectfully Submitted,

Meghan Rumph  
*Recording Secretary*