

# **APPROVED    APPROVED    APPROVED**

## **MINUTES OF THE NEW CASTLE PLANNING BOARD**

**Wednesday, February 23, 2022 – 7:00 p.m. (Macomber Room at Recreation Center)**

**Public Meeting for a Lot Line Adjustment for applicants JD Barker, 28 Colonial Lane, Map 12, Lot 5, and Donald and Karen Pridham, 117 Cranfield Street, Map 12, Lot 9.**

**Public Hearing on a proposed amendment to the Zoning Ordinance Section 9.2.5.1 Conditional Use Permit to clarify where a Planning Board decision can be appealed per State RSA 677:15.**

**Public Hearing on a proposed amendment to the Building Code Ordinance Section 13 (d) and (e) to clarify procedures if a project is not complete after 18 months following the issuance of a building permit and the consequences of starting a project without obtaining a building permit where one is required.**

**Public Hearing on a proposed amendment to the Building Code Ordinance Section 1 (b) to clarify the rating authority on wood shingles.**

**Members Present:** Darcy Horgan, Chair; Lorne Jones; Rich Landry; Iain Moodie; Kate Murray; Margaret Sofio.

**Members Absent:** Tom Hammer; Bill Stewart.

**Others Present:** Larry Gormley, Hoefle, Phoenix, Gormley & Roberts, P.A.; John E. Lyons, Jr., Lyons Law Offices, P.A.; James Nocas, Nocas Law; Don and Karen Pridham; Alex Ross, Ross Engineering, LLC; Curt Springer.

Chair Horgan called the meeting to order at 7:01 p.m. Noting a quorum, Chair Horgan indicated that the voting members are herself, Mr. Moodie, Ms. Murray, Mr. Jones and Ms. Sofio. Mr. Landry is an alternate.

### **1. Public Meeting for a Lot Line Adjustment for applicants JD Barker, 28 Colonial Lane, Map 12, Lot 5, and Donald and Karen Pridham, 117 Cranfield Street, Map 12, Lot 9.**

Attorney John Lyons and engineer Alex Ross presented on behalf of JD Barker, who could not attend the meeting because of a Covid-19 exposure. Attorney Jim Nocas was also present with his clients, Don and Karen Pridham. Attorney Lyons noted that both he and Attorney Nocas have been actively involved in the purchase and sale agreement and the development of the lot line adjustment plans. He felt that the application is very straight forward, and what is being requested fits in well with Mr. Barker's parcel and creates privacy in the area. The Pridhams seek to convey the rear portion of their existing lot, containing 21,538 square feet (about half an acre), to Mr. Barker. Mr. Ross, the surveyor and engineer for the project, showed the lot line

adjustment plan. The existing developed land has a pocket of wetlands, ledge and two small cemeteries referred to collectively as Batson Field Cemetery. Mr. Barker would like to add this land to his parcel to create a larger footprint and more privacy.

Ms. Murray asked about access to the cemetery. Mr. Ross responded that they have created an easement to provide access to the two cemeteries, which is also noted on the plans presented.

Chair Horgan noted that the wetland on the parcel is a designated wetland. Mr. Ross confirmed that status and added it has a 50 foot setback. Attorney Lyons added that Mr. Barker is well-aware of the wetland and has no intention to build on the lot. Attorney Lyons stated that he has worked closely with Attorney Noucas to make sure the lots comply with Town Zoning Ordinances.

Chair Horgan opened the public hearing at 7:14 p.m. Attorney Larry Gormley was present on behalf of abutters Jane Nelsen and Wayne Feigenbaum (Tax Map 12, Lot 6). Attorney Gormley cited RSA 289:3 III, which states that a septic system must be at least 25 feet from a burial ground. He questioned whether the town has granted any sort of relief to allow Mr. Barker's four year old septic system to be within that buffer. Mr. Moodie noted that the septic system plans went before NHDES and were reviewed by Don Graves, the Building Inspector at the time. Attorney Gormley wondered if the RSA he cited was considered at all, as that particular statute does not fall within the purview of the DES. Mr. Moodie responded that the septic system was approved and he was not aware of any formal waiver being needed or granted.

Hearing no further comments from the public, Chair Horgan closed the public hearing at 7:17 p.m. and turned discussion back to the Board. Mr. Moodie requested clarification about Easement A as shown on the plans. Attorney Lyons responded that that easement already exists and is on the Nelsen/Feigenbaum property.

*Mr. Moodie motioned to approve the Lot Line Adjustment and easements for applicants JD Barker, 28 Colonial Lane, Map 12, Lot 5 and Donald and Karen Pridham, 117 Cranfield Street, Map 12, Lot 9, as presented in the Ross Engineering plans dated January 28, 2022. Ms. Murray seconded. Motion carried unanimously.*

## **2. Review and approve minutes to the January 26, 2022 meeting of the Planning Board.**

*Mr. Jones moved to approve the minutes as written for the Planning Board meeting on January 26, 2022. Chair Horgan seconded. Motion carried unanimously.*

## **3. Public Hearing on a proposed amendment to the Zoning Ordinance Section 9.2.5.1 Conditional Use Permit to clarify where a Planning Board decision can be appealed per State RSA 677:15.**

Chair Horgan clarified that this is an amendment recommended by the Planning Board that went before the Town last year and was not approved. This amendment is to clarify and be an aid to applicants who wish to appeal a Conditional Use Permit decision by the Planning Board. The amendment makes clear that per RSA 676:5.III, applicants must go to the NH Superior Court and cannot go to the Town ZBA. Ms. Murray observed that the process has not changed and

perhaps there was a misunderstanding before, as applicants have never been able to appeal to the ZBA.

Chair Horgan opened the public hearing at 7:28 p.m. Curt Springer, 98 Cranfield Street, stated that he does not think local ordinances need to state what the State law says. He felt that if the Board is going to add language in one mention of a Conditional Use Permit, the same language should be added to other areas of the ordinance, such as Section 5.2.3, 6.6.4, and 9.5.5. Ms. Sofio stated that it is nice to have a point of clarification, but she agreed with Mr. Springer's point that there are at least three other instances where this amendment should perhaps be added in the ordinances. Mr. Moodie felt that there is no need to cite the specific RSA, and it may be better to just direct applicants to the Superior Court.

Chair Horgan shared feedback from Town Attorney Keriann Roman. Attorney Roman had noted that it is not required or necessary to add this clarifying language in every place where Conditional Use Permits are mentioned in the Ordinances. The reason to add the language in Section 9.2.5 is because that is where the vast majority of applications come from. Chair Horgan felt that the amendment is helpful to applicants and provides them with an RSA as a reference.

Hearing no further comments from the public, Chair Horgan closed the public hearing at 7:34 p.m. Ms. Murray stated that she did not have strong feelings one way or another. In general, she felt that it is better to not add to bylaws because it can create confusion, but in this case, she believed it is helpful.

The proposed new language is in bold and underlined below.

*Chair Horgan motioned to advance the following Zoning Ordinance amendment to a warrant article at the Town meeting in May 2022:*

## **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).***

Mr. Moodie seconded. Motion carried by a vote of 4 to 1, with Ms. Sofio opposed.

**4. Public Hearing on a proposed amendment to the Building Code Ordinance Section 13 (d) and (e) to clarify procedures if a project is not complete after 18 months following the issuance of a building permit and the consequences of starting a project without obtaining a building permit where one is required.**

Chair Horgan distributed a new version of the proposed amendment, which was revised from the posted version after further discussion with Town Building Inspector Russ Bookholz and Attorney Roman. Chair Horgan noted that the Board must have a public hearing on the version that was posted, and if the Board recommends the language of the newer version, it will be moved to a second public hearing.

Chair Horgan stated that there was nothing in the ordinances beforehand that addressed a project that is still ongoing after 12 months. Mr. Moodie felt that the amendment is missing a few points if applicants are looking for clarity and guidance, such as the criteria for the Building Inspector to deny a six month extension to a building permit. He did not believe that this should be at the Building Inspector's discretion, and thought that building permits should be valid for 18 months. Mr. Moodie also wanted the language to clearly state that the building code ordinance is grandfathered in at the time of the initial building permit grant, so a project would not need to comply with a new building code if the project takes longer, unless the project is abandoned.

Ms. Sofio asked about the building permit policies of other towns. Chair Horgan had spoken with several other towns and found that New Castle's proposed version of this section of the Building Ordinance is less lenient than most of the towns she spoke with. However, the permit extension was always at the discretion of the Building Inspector. She explained that building inspectors want to see continuous work on a project to show that it is not abandoned.

Mr. Jones believed the ordinance as written is onerous for homeowners who are doing their own work. Mr. Moodie felt that it is unfortunate that the building permit validity is not addressed at the State level. Mr. Landry acknowledged Mr. Moodie's concerns about relying on the discretion of the Building Inspector, but also understood where Mr. Bookholz was coming from in terms of not wanting an open-ended building permit.

Members discussed eliminating the building permit extension altogether and instead having the permit be valid for 18 months. If the work is not complete in that time, then the applicant would require a new permit. After further discussion, Mr. Moodie stated that the permit validity should be kept at 12 months, as it serves as a good check point for the Building Inspector.

Chair Horgan turned discussion to the proposed amendment to Section 13 (e). This entire section would be added to the ordinance. Mr. Bookholz was proposing this addition because there is nothing currently in the ordinances that prevents contractors from cheating by starting work without a building permit. The \$275 penalty per day is governed by State RSA. Chair Horgan noted that Attorney Roman informed her that cheaters cannot be penalized without taking them to court, but she agreed that the permit fee could be doubled as an additional penalty.

Ms. Murray asked why the penalties are not included on the current building permit application. Mr. Moodie responded that the penalties were previously on the permit application, but it

became too confusing and needed to be cleaned up. He felt that the penalties belong in the Building Code Ordinance.

Chair Horgan opened the public hearing at 8:16 p.m. Hearing no comments from the public, Chair Horgan closed the public hearing at 8:16 p.m.

*Chair Horgan motioned to re-write the proposed Building Code Ordinance amendments in Section 13(d) and (e) and move the new language to a second Public Hearing. Ms. Sofio seconded. Motion carried unanimously.*

#### **5. Public Hearing on a proposed amendment to the Building Code Ordinance Section 1 (b) to clarify the rating authority on wood shingles.**

Chair Horgan read the proposed amendment. Mr. Moodie noted that the Class B fire rating or higher only applies to roofing shingles, and has never been applied to sidewall shingles. He also felt that there is ambiguity on what a Class B fire rating is, because the National Fire Protection Association does not use this particular rating system. Chair Horgan stated that she would work with Mr. Bookholz on reviewing and further revising the proposed amendment.

Chair Horgan opened the public hearing at 8:25 p.m. Hearing no comments from the public, Chair Horgan closed the public hearing at 8:25 p.m.

*Chair Horgan motioned to re-write Section 1 Code Adoption Paragraph (b) and move the new language to a second Public Hearing. Mr. Jones seconded. Motion carried unanimously.*

#### **6. Update on the Master Plan Committee's actions.**

Chair Horgan shared that the Master Plan Committee has been working with the Rockingham Planning Commission. A survey has been designed and will go out to everyone in town on March 4. Chair Horgan encouraged everyone to complete the survey.

#### **7. Old Business.**

None.

#### **8. New Business.**

Chair Horgan stated that the next Planning Board meeting will be held on Wednesday, March 23. She noted that Mr. Bookholz would like to discuss adding solar panels to next year's zoning ordinance updates, as there is not currently a place in the Ordinance where solar panels are discussed outside of the Historic District.

#### **9. Adjourn.**

There being no further business, Ms. Sofio moved to adjourn the meeting. Ms. Murray seconded. The motion carried, unanimously, and the meeting adjourned at 8:29 p.m.

Respectfully Submitted,

Meghan Rumph  
*Recording Secretary*