

**APPROVED APPROVED APPROVED APPROVED APPROVED**

**MINUTES OF THE NEW CASTLE PLANNING BOARD  
Wednesday, January 3<sup>rd</sup>, 2024 – 7:00 p.m. (Macomber Room)**

**Continuation of a Public Hearing for applicant Ross Conley, LLC, 24 Salamander Lane, Tax Map 18, Lot 32, for a Conditional Use Permit for work within the tidal buffer zone to repair an existing seawall and revetment. New plans dated 12/12/23 submitted. Zoning Ordinance 9.2.5.**

**Lot Line Adjustment per the applicant, John E. Lyons, Jr. of Lyons Law Offices, P.A., on behalf of property owner J.D. Barker, 28 Colonial Lane, Tax Map 12, Lot 5 for a 1 acre parcel currently owned by Benjamin Zimmerman and Erica Holzaepfel, 40 Vennards Court, Tax Map 17, Lot 3. Subdivision Regulations.**

**Public Information Presentation on a proposed new antenna to be installed on property controlled by UNH. No vote of the Planning Board required.**

**Public Hearing on a proposed amendment to the Zoning Ordinance 9.3.5 Activities Subject to Approval by Historic District Commission, to eliminate the words, “and is visible from any street”.**

**Members Present:** Darcy Horgan, Chair; Anne Crotty; Nancy Euchner; Lorne Jones; Rich Landry; Bill Stewart.

**Members Absent:** Kate Murray.

**Others Present:** J.D. Barker; Robin Bianchi; Federico Clerici; Joseph Cuetara; Pam Cullen; Mary Pat Gibson; Erica Holzaepfel; Etoile Holzaepfel; Jeremiah Johnson, UNH; David Kovic; Mindy Mazoni, UNH; Megan McCabe; Chuck McIntyre; Duncan Mellor, Civilworks New England; John Myles; Kimberly Peace, Hoyle, Tanner & Associates, Inc.; Doug Pinciario; Nate Reynolds, UNH; Peter Rice; Alex Ross, Ross Engineering, LLC; Rodney Rowland; David Severance; Curt Springer; Guy Stearns; Ben Stebbins; Hank Stebbins; Chris Whalen; Ben Zimmerman.

Chair Horgan called the meeting to order at 7:00 p.m. Noting a quorum, Chair Horgan indicated that the voting members are herself, Anne Crotty, Nancy Euchner, Rich Landry, and Bill Stewart. Lorne Jones is an alternate.

**1. Continuation of a Public Hearing for applicant Ross Conley, LLC, 24 Salamander Lane, Tax Map 18, Lot 32, for a Conditional Use Permit for work within the tidal buffer zone to repair an existing seawall and revetment. New plans dated 12/12/23 submitted. Zoning Ordinance 9.2.5.**

Duncan Mellor, Principal Coastal Engineer of Civilworks New England, presented on behalf of Applicant Ross Conley. The site has had significant wave action, particularly during the

December 2022 storm, which damaged the seawall and stone revetment. The seawall is 242 linear feet and has one patch of stone revetment. The original proposal was to do repointing work on the seawall to fix the localized damage. The owner spoke with the contractor, and they decided to do a longer-term fix, which requires replacing a section of the wall. The replacement will use precast concrete retaining wall blocks and will be within the existing footprint. The stone revetment is mostly within the tidal buffer zone, with 400 square feet below the highest tide and above mid-tide level. The seawall work will be done in the dry with 121 square feet of work occurring in the tidal buffer zone. Mr. Mellor presented drawings of a cross section view of the wall. The lifespan of the concrete should be at least 100 years, according to Mr. Mellor.

A timber ramp originally provided access from a concrete slab onto the beach. The applicant seeks to replace this in kind with a four foot by 12 foot wood ramp over the revetment. Mr. Mellor noted that DES has already authorized the ramp replacement.

Temporary access will be provided by mats on the beach to allow for a rubber track excavator to replace the section of wall and do repointing repairs. The repointing work will just require a wheelbarrow. Mr. Jones asked how the concrete blocks will be brought to the site. Mr. Mellor responded that this is normally handled by a flatbed, and the contractor performing the work is based in Newington, so it should not be an issue. Mr. Mellor added that the applicant has already applied to DES, who requested more information. The applicant responded and copied the Conservation Commission. DES has not yet responded to the additional information. A Shoreland permit is not needed.

Chair Horgan asked about the difference between the revetment and the seawall. Mr. Mellor responded that revetment is a stone slope and is more tolerant to wave action. Waves sometimes are reflected off a vertical seawall, so DES prefers revetments. Mr. Stewart requested that if there is an opportunity to use stone instead of concrete, he felt that would be aesthetically better looking. Mr. Mellor noted that the concrete has stones set in it already. This is the same product that was used for rebuilding the seawalls on Wood Island.

Chair Horgan asked what the erosion control log is. Mr. Mellor explained that it is like a silt sock with woodchips in it, which is more effective than a silt fence. The sock conforms to the ground and is effective at preventing water from flowing underneath it. This is normally left down only during low tide, and removed during high tide.

Mr. Mellor stated that it is beneficial to do this work during this particular time of year, so the intent is to get the project done as soon as possible during the cold season. The applicant has a separate application to add a porch onto the house, and would coordinate the timing of that project with the seawall repairs.

Chair Horgan opened the public hearing at 7:18 p.m. Hearing no comments from the public, Chair Horgan closed the public hearing at 7:18 p.m.

*Mr. Landry motioned to approve the application for Applicant Ross Conley, LLC, 24 Salamander Lane, Tax Map 18, Lot 32, for a Conditional Use Permit for work within the tidal buffer zone, as presented in the Civilworks New England plans dated December 12, 2023. This approval is conditioned upon the following: 1) approval of all state and federal permits, and 2)*

*all erosion control measures required by the State be in place before the start of construction during work hours and low tide. Approval is based on the Applicant having met all criteria for a Conditional Use Permit as stipulated in the New Castle Zoning Ordinance Section 9.2.5. Ms. Crotty seconded. Motion carried unanimously by a vote of five to zero.*

**2. Lot Line Adjustment per the applicant, John E. Lyons, Jr. of Lyons Law Offices, P.A., on behalf of property owner J.D. Barker, 28 Colonial Lane, Tax Map 12, Lot 5 for a 1 acre parcel currently owned by Benjamin Zimmerman and Erica Holzaepfel, 40 Vennards Court, Tax Map 17, Lot 3. Subdivision Regulations.**

J.D. Barker presented with Alex Ross of Ross Engineering, LLC. Carol White recently sold her property at 40 Vennards Court to Ben Zimmerman and Erica Holzaepfel. The Zimmerman/Holzaepfel property is approximately two acres and abuts the Barker property to the southeast. Mr. Barker stated that he does not want the land behind his house to be developed, and it is very important to him that the trees and wildlife be preserved. Mr. Zimmerman and Ms. Holzaepfel will convey one acre of land to Mr. Barker, leaving them with 0.97 acres. The new lot line will be 15 feet from the existing shed. Mr. Stewart asked how much road frontage will be on Pit Lane. Mr. Barker responded that there is currently a 14 foot section, but it is unusable because of the cemetery and wetlands, so there would not be enough frontage for future construction.

Ms. Crotty asked what zoning district the property is in and the size of the lot. She confirmed that the grantors will have sufficient land so their lot will not be made nonconforming. Ms. Crotty suggested not waiving requirements 13 and 24 from the Subdivision Plan/Lot Line Requirements Checklist. Mr. Jones asked if there are any easements on the new parcel. Mr. Barker responded that he has an easement on his property, but it is not near the land that will become part of his lot. Mr. Stewart clarified that the cemetery has an easement from Pit Lane. The lot line adjustment will not impact the cemetery setbacks.

Chair Horgan opened the public hearing at 7:33 p.m. Megan McCabe of 29 Vennards Court stated that Mr. Zimmerman and Ms. Holzaepfel currently go through her lot to access their home at 40 Vennards Court. She does not have any objections to this, but wanted to make sure that the lot line adjustment will not interfere with access to the Zimmerman/Holzaepfel lot. Mr. Barker confirmed that the access will not change.

Robin Bianchi, 63 Neals Lane, asked what frontage the lot line adjustment would give Mr. Barker. Mr. Ross responded that it would give him 250 feet. Ms. Bianchi wondered if the lot line adjustment would change access down the road if there were a change in ownership. Chair Horgan stated that Neals Lane cannot currently handle any additional access safely, due to the width and condition of the road, so the road would have to be improved before any future development was allowed. The Town rule is that 100 feet of frontage is required for a legal lot size. Mr. Barker added that the road is not currently wide enough and portions are privately owned. Chair Horgan confirmed that as conditions are today, the fire marshal would not allow development or additional building on Mr. Barker's lot. Mr. Stewart felt that this does raise a valid concern for building in the future because Mr. Barker's lot is large enough in size and has enough frontage.

Hearing no further comments from the public, Chair Horgan closed the public hearing at 7:39 p.m.

*MOTION FOR A WAIVER TO THE CHECKLIST REQUIREMENTS*

*In regards to the application for a lot line adjustment for applicants J.D. Barker, 28 Colonial Lane, Map 12, Lot 5 and Benjamin Zimmerman and Erica Holzaepfel, 40 Vennards Court, Map 17, Lot 3, Ms. Crotty made a motion to waive the Subdivision Plan/Lot Line Requirements Checklist item numbers 1, 9-12, 14-23 and 25-26 as requested in a letter from Attorney John E. Lyons dated December 11, 2023, as these requirements are not applicable for a lot line adjustment. Mr. Landry seconded. Motion carried unanimously by a vote of five to zero.*

*MOTION TO APPROVE THE LOT LINE ADJUSTMENT*

*Mr. Landry made a motion to approve the lot line adjustment for applicants J.D. Barker, 28 Colonial Lane, Map 12, Lot 5 and Benjamin Zimmerman and Erica Holzaepfel, 40 Vennards Court, Map 17, Lot 3 per the Ross Engineering plans dated 8/1/23. This approval is conditioned upon the requirement that the plans depict the zoning district and dimensional requirements of both lots. Approval is based on the applicant meeting the requirements of Subdivision Regulations section 3.18 that requires no non-conforming lots are created and the understanding that this approval does not create the new boundaries. In order to create the new line, a conveyance must occur between the property owners by deed and recorded in the Registry of Deeds. Ms. Euchner seconded. Motion carried unanimously by a vote of five to zero.*

Chair Horgan informed the applicant that he must take the mylar to the Registry of Deeds in order for the lot line adjustment to be officially recorded and conveyed.

**3. Public Information Presentation on a proposed new antenna to be installed on property controlled by UNH. No vote of the Planning Board required.**

Chair Horgan stated that this is a courtesy presentation that will serve as an information session for the Board and the public. Kimberly Peace, senior environmental coordinator for Hoyle, Tanner & Associates, Inc. presented along with representatives from UNH. UNH is proposing to install a direct replacement tower for the 30-foot tall existing tower. This will allow for communication with Appledore Island and the Isles of Shoals. The new tower will be 50 to 70 feet tall. It will be an open tower with a monopole structure, and will look very similar to what is there now, but taller. Ms. Peace stated that her team has been in touch with historic boards, environmental boards, and the Town about the proposal. The NH Division of Historic Resources issued a no adverse effect letter. According to Ms. Peace, Russ Bookholz, Town Building Inspector, previously informed her that the new tower does not require any town permitting.

Mr. Stewart asked if they had spoken with the Coast Guard to use their line of sight. He expressed concern that the proposed tower will be an obvious structure located in a significant viewpoint in town, as it is right next to the Town landing and newly acquired property on Ocean Street. Chair Horgan added that the maximum height restriction in town is 32 feet, so to have a tower potentially double this size would be shocking. Ms. Peace responded that they have looked at alternate locations and determined that using the existing location would be the least disruptive to abutters and to Fort Constitution. Mr. Stewart felt that New Castle was not necessarily brought

into consideration with the proposal, and suggested pumping the brakes a bit to have more discussion with the Town.

Chair Horgan opened the public hearing at 8:02 p.m. There were questions about the dimensions of the current and proposed tower. The current tower is three-sided lattice work, 18 inches at the base and 12 inches wide at the top. The new tower will be monopole and 10 inches in diameter, with a final anticipated height between 55 to 60 feet. The top of the tower may have microwave antennas 18 inches in diameter and VHF antennas. The meteorological instruments on the current tower will be transferred over to the new tower. The tower will provide a direct line of sight to Star Island and Appledore Island in support of an underwater acoustics project. There is room for additional equipment to be attached to the tower, but UNH does not want to interfere with Coast Guard communications.

Mr. Jones asked if alternatives were explored, such as a satellite. Mr. Landry suggested using a Starlink terminal. The UNH representatives responded that they tried to find the best location that would serve the historical, archaeological, and geographical interests of all parties. UNH indicated that they can explore other options, but many of them will not work logistically or budget wise. Members of the public asked if the tower would interfere with cell phones and emergency communications. It was noted that the tower is FCC licensed. Ms. Peace added that part of the FCC process is to post notices about the project in the newspaper. There were concerns about the impact on wildlife, such as eagles. Ms. Peace stated that the National Fish and Wildlife Service determined that there would be no adverse effect to any federally protected species. The tower would not have a light. Alternate locations were suggested, such as Pulpit Rock tower in Rye, though UNH noted that they own the property in New Castle and wanted to work within that portfolio. The possibility of the Town reserving space to use the tower for its own needs was raised. Mr. Stewart pointed out that the Town has not been a party to the conversation so far, so this has not been considered.

Residents agreed that the relationship of the tower to the community is very important, and viewpoints from Town must be considered. It was suggested to get Janet Stevens' input from the NH Executive Council. Mr. Stewart urged the presenters to pause and have a sit down with at least the Select Board. UNH stated that they currently do not have a construction date, as they are working on funding.

Hearing no further comments from the public, Chair Horgan closed the public hearing at 8:32 p.m.

#### **4. Public Hearing on a proposed amendment to the Zoning Ordinance 9.3.5 Activities Subject to Approval by Historic District Commission, to eliminate the words, “and is visible from any street”.**

Chair Horgan stated that this amendment is being requested by the Historic District Commission, and would require that any changes in the Historic District, even if not visible from any street, would need to come before the HDC.

Chair Horgan opened the public hearing at 8:36 p.m. Etoile Holzaepfel, Chair of the HDC,

shared that the wording “and is visible from any street” was not originally part of the Zoning Ordinance and was added at a later time. She learned from a Rockingham Planning Commission training session that this exclusion is unusual. Exceptions are already outlined in the Historic District ordinances. Views of property can change because of vegetation removal. The HDC wants to protect the integrity of the Historic District, but need the tools in the ordinance to address these issues. According to Ms. Holzaepfel, some cases have not come before the HDC because the Building Inspector deemed the proposal would not be visible from the street, when Ms. Holzaepfel felt that it was. She stated that people may not need to come with a full application, and the proposal may be approved if the change is not visible from the street and would not change the character of the town, for example.

Members of the public shared their concerns and support of the proposed amendment. Some cases were discussed where something was not previously visible from the road and did not conform with HDC rules, but with subsequent vegetation removal, some aspects of a structure may now be visible. Communication issues and a lack of support between boards were issues that the HDC faces. Rodney Rowland, former HDC Chair, shared that it is difficult for the HDC to know their purview because what is visible from the street can be vague. He suggested perhaps leaving the language as is and focus on working together to improve HDC processes in order to allow the Commission to achieve its goal of historic preservation in New Castle. Another resident pointed out that the HDC may be able to solve some issues they are facing by following rules and procedures that are required by State law. The HDC should seek legal advice on how to do this.

Many members of the public spoke against the proposal, with concerns about additional restrictions limiting housing values. The practicality of how the amendment would be administered was also questioned, and some thought the proposal was an overreach of authority and would amount to unreasonable taking. Some suggested that the amendment, if approved, would subject the Town to many lawsuits, as the proposal may violate constitutional rights of property owners. The Master Plan Committee has been working diligently to protect historic integrity, so one resident recommended waiting until the Master Plan has been adopted before changing the zoning ordinance. Others commented on how design is very subjective and Boards change. The proposal may eliminate individual choice. Many residents agreed that drafting new language is not the best avenue to solve the problems facing the HDC.

Hearing no further comments from the public, Chair Horgan closed the public hearing at 9:31 p.m. Mr. Landry understood the reason for the proposed amendment and acknowledged where Ms. Holzaepfel is coming from. However, he asked whether we are restricting something for the public benefit, and if so, will this be causing more harm to individual applicants. Mr. Landry stated that if the language is passed, every single historic district property will need to go before the HDC, which is unfair, expensive, and time consuming. He felt that the change would be overly burdensome and that the current ordinance strikes a fair balance. He did not like the idea of creating an additional regulation to prevent something that generally does not happen, as this causes more harm than what it is designed to prevent.

Mr. Jones wondered if there is softer language that could be used. Mr. Stewart stated that the ordinance does not need to be changed, rather, it is a training and procedural change where the Building Inspector needs to consult with the HDC Chair. The Select Board can convey this with

the Building Inspector. Ms. Euchner agreed and added that the issue seems to boil down to who's call it is as to who can review an application. Ms. Crotty also agreed that the problem can be solved with a procedural change.

Chair Horgan pointed out that it seems that the HDC does not get to hear all cases in its District because the Building Inspector may make a determination that a change would not be visible from the street. She felt that it should be in the HDC rules of procedure that the HDC Chair gets notice of every application in the Historic District. The Chair and Building Inspector should have a discussion over each application to determine whether a full application is needed before the HDC. Chair Horgan was not comfortable putting this proposed amendment to vote on the ballot given the discussions this evening.

The proposed new language is in bold and underlined below.

*Chair Horgan motioned to NOT advance the following Zoning Ordinance amendment to a warrant article at the Town meeting in May 2024:*

#### *9.0 OVERLAY ZONING DISTRICTS*

##### *9.3 HISTORIC DISTRICT ORDINANCE*

###### *9.3.5 Activities Subject to Approval by Historic District Commission:*

*Except as provided herein, it shall be unlawful for any owner or person (including without limitation any municipal or governmental entity) to construct, alter, move or demolish any building, structure, or improvements which lies within the New Castle Historic District ~~and is visible from any street~~ without first obtaining a Certificate of Approval from the Historic District Commission in the manner prescribed in this Article. Exceptions are declared in Section 9.3.5.2.*

Mr. Landry seconded. Motion carried unanimously by a vote of five to zero.

### **5. Approve minutes to the November 29, 2023 meeting of the Planning Board.**

*Mr. Landry moved to approve the minutes as written for the Planning Board meeting on November 29, 2023. Ms. Euchner seconded. Motion carried unanimously.*

### **6. Discussion on the draft version of the Master Plan.**

Chair Horgan explained that the Planning Board must provide any proposed changes to the Master Plan to the Master Plan Committee, who will give the revision to a graphic designer to prepare a mock-up version of the plan. A public meeting will then be held for final input on the plan. Ms. Euchner thought that the Committee did a nice job of incorporating comments from the public. Ms. Crotty gave suggestions for revising some of the recommendations on page 5 of the draft Master Plan. She asked whether solar panels should be addressed on page 27 where alternative energy sources are discussed.

Mr. Stewart wondered whether the school should be mentioned in the Master Plan. Chair Horgan responded that Jen Rowden of the Rockingham Planning Commission had recommended not

discussing the school because it is a separate entity. Mr. Stewart felt that if the Post Office is mentioned, the school should be discussed further given that it is part of the fabric of the community.

#### **7. General discussion on short-term rentals.**

Chair Horgan shared that there was a 2022 case for the Town of Conway, who got sued over short-term rentals. Conway now allows short-term rentals, but they regulate them. The case has set a precedent where Airbnbs are treated as a residential use, not a commercial use. Inns and bed and breakfasts are treated differently.

Mr. Stewart noted that the Select Board has not been taking a stance on short-term rentals because it has not been a big issue in town. Ms. Crotty wondered if the town is currently suffering harm from short-term rentals to the point that this needs to be addressed. Mr. Landry did not feel that this is something the town needs to address at this point. There was discussion about the need for the homeowner to be present if a property is rented out. The Board ultimately decided to gather more information before making any further decisions.

#### **8. Old Business.**

None.

#### **9. New Business.**

The next Planning Board meeting will be held on Wednesday, January 24, 2024 at 7:00 p.m. at the Town Hall.

#### **10. Adjourn.**

There being no further business, Ms. Euchner moved to adjourn the meeting. Mr. Stewart seconded. The motion carried, unanimously, and the meeting adjourned at 10:37 p.m.

Respectfully Submitted,

Meghan Rumph  
*Recording Secretary*