

APPROVED***APPROVED***

Planning Board Meeting
Town Hall
Wednesday, February 22, 2017
7:00 p.m.

Public Hearing for a Conditional Use Permit for applicants Benjamin and Jane Lannon, 55 Locke Road, Map 11, Lot 6 for site improvements within the 100' tidal wetland buffer including an addition to the existing residential structure, replacement of the stairs that provide foot access to the tidal dock, reconfiguration of the existing driveway and landscape improvements.

Public Hearing for a Conditional Use Permit for applicants Steven and Cindi Baker, Trustees of the Sea Gull Revocable Trust, 51B Laurel Lane, Map 11, Lot 27. Project proposes redevelopment of the lot including a new single-family residential home with attached garage, deck, pervious driveway, associated grading, landscaping and repair of the existing retaining wall.

Vote on changing section 2.3.3 of the NC Zoning Ordinance, Definitions: Accessory Apartment to a new name and definition, Definitions: Accessory Dwelling Unit (ADU).

Public Hearing on the Ordinance Changes:

- **Section 6.6 Accessory Apartments**
- **Section 9.3.4 Historic District Commission**
- **Section 9.3.7.3 Historic District Commission**
- **Section 9.3.7.3: Hearings and Notices**

Members Present: Darcy Horgan, Kate Murray, Margaret Sofio, Geof Potter, Rich Landry

Others Present: Jane Lannon, Steve Baker, Cindi Baker, John Chagnon, Ken McDonald II, Tom Smith

Members Absent: Tom Hammer, Bill Stewart

Chair Horgan opened the meeting at 7:00 pm. and noted the voting members: Darcy Horgan, Kate Murray, Margaret Sofio, Rich Landry, and Geof Potter.

- 1. Public Hearing for a Conditional Use Permit for applicants Benjamin and Jane Lannon, 55 Locke Road, Map 11, Lot 6 for site improvements within the 100' tidal wetland buffer including an addition to the existing residential structure, replacement of the stairs that provide foot access to the tidal dock, reconfiguration of the existing driveway and landscape improvements.**

Ms. Jane Lannon, applicant, described the proposed work within the 100 foot Tidal Wetlands Buffer. Changes to the front of the residence will remove a portion of the second story area and increase the first floor area, incrementally increase the footprint of the porch, eliminate some existing walkways and add new ones, and to the back of the residence, will remove some brick patio, terrace the sloped yard with retaining wall, stairs, and buffer plantings, and increase the width of the dock's access stairs to four feet. The New Castle Conservation Commission (NCCC) indicated their interest in the improvement of the slope down to the water which the applicant addressed by replacing the grassed slope and adding new ten foot buffer planting areas between the lawn and the water to absorb runoff.

Ms. Lannon noted that a three foot by six foot granite stair set on the northwestern edge of the property, which is secondary to the dock access, was intended for removal in order to achieve a balanced impervious area surface calculation, however, the NCCC recommended the stair set remain to avoid potential erosion and new runoff circumstances that the disturbance might cause. Ms. Lannon is not opposed to the NCCC recommendation. Chair Horgan confirmed that the plans identify the stair set for removal.

The plans have received approval from the NH Department of Environmental Services (NH DES).

Chair Horgan opened the Public Hearing at 7:10 p.m. and, hearing no comment, closed the Public Hearing 7:11 p.m.

There being no further discussion,

Ms. Kate Murray motioned to approve the Conditional Use Permit for applicants Benjamin and Jane Lannon, 55 Locke Road, Map 11, Lot 6 for site improvements within the 100' tidal wetland buffer including the addition to the

existing residential structure, replacement of the stairs that provide foot access to the tidal dock, reconfiguration of the existing driveway and landscape improvements, and changes to the entrance and existing porch as presented on the plan dated December 13, 2016 conditioned that the stone stairs as depicted on the plan as being removed actually remain in place and that the applicants adhere to the Conservation Commission's Notice of Decision dated January 9, 2017. Mr. Rich Landry seconded the motion. Motion was unanimously approved.

2. Public Hearing for a Conditional Use Permit for applicants Steven and Cindi Baker, Trustees of the Sea Gull Revocable Trust, 51B Laurel Lane, Map 11, Lot 27. Project proposes redevelopment of the lot including a new single-family residential home with attached garage, deck, pervious driveway, associated grading, landscaping and repair of the existing retaining wall.

Mr. John Chagnon, Ambit Engineering, representing the applicants, noted the presence of Steve and Cindi Baker, applicants, and noted that the application is for a Conditional Use Permit for work within the 100 foot Tidal Buffer Zone, with construction within the 50 foot buffer, including a variance that was granted on February 21, 2017 by the New Castle Zoning Board of Adjustment (ZBA).

Referencing the Conditional Use Permit criteria, Mr. Chagnon provided an overview of the proposed project for a single family residence that replaces the existing single family residence and two other structures that are more proximal to the tidal resource than the proposed new structure.

The use can't be carried out on a portion of the lot outside of the buffer.

Pointing out the property and buffer zone boundaries, Mr. Chagnon showed that only a very small area on the north side of the property was outside the buffer.

Design, construction, and maintenance, to the extent feasible, will minimize detrimental impact in the wetland and be consistent with the purpose and intent of the article.

This will be addressed by moving the structure away from the water resource to allow for a more enhanced buffer. The Landscape Master Plan, prepared by Labrie & Associates, resulted from the input from the NCCC. Specifically, their concern about vegetating a ledge slope, is addressed by a straw-buck swale (terraced straw bale flakes that temporarily hold the soil while the plant roots take hold), to revegetate without harming the resource. A second planting area, planned for the location of the removed structure, along with some existing trees, will create a vegetated buffer along the entire front of the property near the resource. Referencing the NCCC Notice of Decision, dated January 9, 2017, Mr. Chagnon noted that the landscape plan upon which the approval was conditioned, has subsequently been reviewed and approved by the NCCC.

There is no feasible alternative that has less detrimental impact to the wetlands. The plans adhere to the NCCC's request for a scaled back building and impervious surface areas. Where construction or temporary activity may disturb the area, the owner agrees to restore the site, to the extent possible, to its original grade and condition. The plans indicate, via notes, the sequence of construction and the methods of erosion control. Mr. Chagnon stated his opinion that "the site will be restored to a vegetative state and not be a problem in the future."

No hazards to individual or public health, safety, or welfare due to the loss of wetland, contamination of groundwater, or other reasons will be created. Mr. Chagnon noted that the impacts are not direct to the wetlands but rather are in the buffer zones, and does not believe any public hazards will be created by this reuse of the property.

Included in the scope is the reconstruction of the existing seawall which is currently in disrepair.

NH DES permits must be obtained. Having filed for the permits in December, 2016, the applicant is presently

preparing a response to NH DES's Request for More Information (RFMI).

The disruption and use are designed in a manner that minimizes environmental impacts. This is addressed through minimizing impervious surfaces, the revegetation of the ground surfaces, and providing an improved buffer to infiltrate and remove intoxicants from runoff.

Mr. Chagnon characterized the plans as modest and a good site fit. Noting the abundance of plan set iterations, Mr. Chagnon clarified that the most recent revision is dated February 14, 2017 which revised Sheet C2. Chair Horgan noted that the Board is working with plans dated November 29, 2016. Since November 29, Mr. Chagnon noted the addition of a gutter to a portion of the roof in order to direct the runoff to the rain garden as well as the addition of an underground propane tank to the drawing.

Ms. Murray asked and Mr. Chagnon answered that it is usually not an issue to bury a propane tank in proximity to the water because, in the event of a rupture, propane, being lighter than air, would evaporate into the atmosphere. The tank will be shown on the plans going to NH DES when the response to the RFMI is submitted.

Responding to Ms. Murray's request to elaborate on what additional information was being requested by NH DES, Mr. Chagnon recounted:

1. Revised plan with hatched area depicting the Natural Woodland Buffer.

Regulations call for protection of the area between the 50 foot and 150 foot buffer boundaries (Natural Woodland Buffer). Drawings will be resubmitted to reflect the 749 square feet of this area that is currently in an unaltered state.

Mr. Chagnon indicated that the property would comply with the NH DES Natural Woodland Buffer regulation without the need for a waiver however, a waiver of the minimum standards was requested because, although the relocated structure is more nearly conforming, a portion of the proposed structure is still within the 50 foot buffer.

2. The percentage of area maintained in an unaltered state on a nonconforming lot shall not be decreased. The plan depicts Buffer Planting Area A. Is this to compensate for the reduction of the Woodland Buffer? Please include more saplings and shrubs for this particular area.

This condition was reviewed and approved of by the DES's Shoreland Management representative, Darlene Forst, but needs to be explained in the RFMI. While the planting plan covers the entire severely sloped area of the removed structure with shrubs, Mr. Chagnon noted that it doesn't score 50 points in the grid system. While the point score isn't met, it is an improvement to current conditions.

Chair Horgan commented that many of the NH DES concerns will likely be addressed by the Landscape Master Plan.

Ms. Margaret Sofio asked about the trees shown for removal. Mr. Chagnon responded that all the to-be-removed trees are within the building or driveway area, or so close that they require removal. Mr. Landry added that some may need removal due to the significant grade change.

3. More details were requested for Buffer Planting Area B, which the Landscape Master Plan will supply.

4. Demonstrate why the dwelling cannot be relocated landward of the primary building setback.

Similar to what was required by the ZBA, Mr. Chagnon will describe setback lines, proximity to the neighboring building, and the turning area for the driveway as barriers to moving landward.

5. Please relocate the deck on the dwelling as it is not complying with RSA 843-B:11 Nonconforming Structures.

The state allows a deck to extend a maximum of twelve feet towards the reference line on nonconforming structures erected prior to 1994, but does not apply to structures built subsequently, as in this case. The applicant is hoping to prevail given the improved circumstance from the current deck that is six feet from the reference line. The Shoreland waiver request will include this aspect that is "more nearly conforming."

6. Provide more detail about how the retaining wall will be built. Will work occur from the top of the bank?

While that decision would lie with the contractor, Mr. Chagnon speculated that work would likely be from the land side, but that it may be possible from the water side. If water side, plans would need to note work timing details including tide and seasonal timing. Plans are to rebuild the wall to a new height of elevation eight, 18 inches higher than the existing wall.

Mr. Landry and Mr. Geof Potter commented that the cost and feasibility of water side construction appear to be prohibitive.

Chair Horgan asked, and Ms. Baker affirmed her intention to follow the recommendation from Labrie & Associates for a new, thicker, water-retaining grass variety with a minimal fertilizer requirement. Mr. Chagnon advocated that grass, versus shrubs and planting beds where much may wash away, provides fast growing soil stabilization.

Mr. Chagnon responded to Chair Horgan's request to detail the roof runoff plans, noting that gutters are as shown, on the front porch edge and the edge of the back end of the garage, to direct water to the rain garden. Other runoff will spread across the entirety of the slope, rather than concentrate through a gutter. The impervious surface calculation is not increasing, the porous driveway and rain garden will help infiltrate the water, and the remainder of the runoff will be handled by the buffer so that it has more treatment before it arrives at the resource.

Responding to a question about how the ledge will be broken up, Mr. and Ms. Baker indicated their plans to hammer rather than blast.

Ms. Murray, noting the driveway extension into the right of way, asked whether the impervious surface would be continued. The Bakers and Mr. Chagnon were not certain whether the project would include the right of way driveway extension, but also noted that the off-property construction was not included in any of the impervious surface calculations.

Chair Horgan and Ms. Murray agreed that they don't believe the requirement for a maintenance contract is necessary. Mr. Baker indicated that the landscape design caters to his preference for low maintenance with a rain garden that will require very little after the first year.

Chair Horgan described that the proposal has been shaped through a significant vetting process, including approvals from the NCCC and ZBA, as well as the still-in-process NH DES approval, so it is the best possible plan for such a sensitive site.

Chair Horgan opened the Public Hearing at 8:07 p.m. and hearing no public comment, closed the Public Hearing at 8:08 p.m.

Mr. Landry spoke in favor of the plan, as it replaces three existing buildings that are close to the waterline with one, further away from the shore.

Mr. Geof Potter made a motion to grant a Conditional Use Permit for applicants Steven and Cindi Baker, Trustees of the Sea Gull Revocable Trust, 51B Laurel Lane, Map 11, Lot 27. Such project proposes re-development of the lot including a new single-family residential home with attached garage, deck, pervious driveway, associated grading,

landscaping and repair of the existing retaining wall as described in the plan packet dated February 14, 2017 and landscape master plan received on January 25, 2017 and conditioned upon DES approval. Ms. Sofia seconded. Motion carried unanimously.

3. Vote on changing section 2.3.3 of the NC Zoning Ordinance, Definitions: Accessory Apartment to a new name and definition, Definitions: Accessory Dwelling Unit (ADU).

Chair Horgan described a proposed definition change to the New Castle Zoning Ordinance to match the ADU regulations under consideration.

Original Wording:

2.3.3 Accessory Apartment: One apartment located within an owner occupied, single family dwelling which is clearly a subordinate and accessory part thereof, and which has safe and reasonable means of ingress and egress. (May, 2009)

Proposed New Definition:

2.3.3 Accessory Dwelling Unit (ADU): A residential living unit that is within or attached to a single-family dwelling or is located in a detached structure, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies.

Ms. Murray noted that the new definition essentially follows the state's definition.

Chair Horgan made a motion to approve the change in the new name and definition of Section 2.3.3 of the New Castle Zoning Ordinance. Ms. Sofia seconded the motion. Motion carried in a unanimous vote.

A Public Hearing for the proposed change will be scheduled for next month and publicized accordingly.

4. Public Hearing on the Ordinance Changes:

- a. Section 6.6 Accessory Apartments: Amend sections 6.6.1 thru 6.6.6 in its entirety to conform with the new State RSA 674:71-73 and RSA 674:21 Accessory Dwelling Units.**

Chair Horgan opened the Public Hearing at 8:21 p.m. and recognized Mr. Ken McDonald, 254 Wentworth Road, who read a letter to the Board, a copy of which was placed in the file. Mr. McDonald described his work-in-progress on a detached garage sited on his significantly larger lot that he hoped would also contain an approximately 1000 square foot ADU. After initial affirmation in earlier iterations of the revised ordinance language that supported ADUs in excess of 750 square feet under certain conditions, he was disappointed to learn that the Planning Board, in its most recent draft, had removed that language. He believed the size limit to be unnecessarily restrictive to those whose lot sizes could easily accommodate a larger size ADU and requested that the Board reinstate the earlier draft language that allowed for an ADU area of up to one-third of the total living area in situations where the setbacks, lot size and height restrictions can be met.

Mr. Landry concurred with Mr. McDonald noting that on a property as large as Mr. McDonald's seven acres, believes a 6,000 square foot house with a 2,000 square foot ADU to be appropriate. Chair Horgan countered that the town ordinance discourages two houses on one lot. Mr. Landry specified that the differences between an ADU and a second house, including the intent for a familial relationship and a two bedroom limit, create the distinction; properties that can meet the setback, density, and maximum living space requirements shouldn't be limited to 750 square feet.

Chair Horgan indicated that the larger than 750 square foot language was removed at the suggestion of the Building Inspector, believing that his intent was for a more streamlined ordinance.

Mr. Tom Smith, also of 254 Wentworth Road, distributed copies of the plans for the proposed detached garage and ADU, and described the near term need for on-premise living quarters for Mr. McDonald's parents, that Mr. Smith and Mr. McDonald believed could be satisfied by utilizing the space over their planned garage. Recognizing that the Building Inspector was the source of the concern for larger ADU's, Mr. Smith met with him to review his situation. Mr. Smith reported that the Building Inspector's rationale was his concern that too-large ADUs be sited in congested areas, but agreed that Messrs. Smith and McDonald have a unique situation given their property size. He therefore understood and agreed that Mr. Smith would propose a revision to the draft language to the Planning Board.

Mr. Smith proposed two new draft language options of the ordinance, which he distributed for consideration, that would better suit his and other larger lot owners' needs, while protecting against added congestion in the more densely developed areas, by requiring that all density and lot coverage requirements are met before an ADU's area may exceed 750 square feet. With the size-restrictive language of the current draft ordinance, Messrs. Smith and McDonald would need to seek relief from the ZBA in order to build the ADU that they desire, which requires expense and proof of hardship.

Chair Horgan closed the Public Hearing at 8:45 p.m.

Mr. Landry recalled that the intent behind the most recent draft language was that it not be needlessly inclusive, as it would be vetted through the Public Hearing process.

Chair Horgan, in considering the restrictive language, observed that the ordinance was intended for all residents and for all time, absent a further change. Further, ZBA does provide an avenue for appeal. Pertaining to Messrs. Smith and McDonald's concern, Mr. Potter characterized the 750 square foot limit as an arbitrary number, noting that there is no impact to the town whether they utilize 750 or 1000 square feet of their garage as an ADU.

Members agreed that they are not in a position to predict a ZBA outcome.

Mr. Landry observed that the existing zoning restrictions for living area, coverage, etc. will prohibit the overdevelopment of congested areas. An unintended consequence of the size restriction may be that larger lots with larger expansion potential might build larger, illegal ADUs.

Chair Horgan summarized the potential negative outcomes that may derive from an overly liberal ADU size ordinance:

- an ADU that appears to be the primary residence, or dwarfs the primary residence
- overcrowding
- two houses on one lot

Mr. Landry noted that with a limitation to one-third the size of the primary dwelling, there is no threat to density due to the existing lot limitations, nor aesthetics, due to the subordinate size language.

Ms. Sofio also noted that the additional, proposed 20 percent larger lot requirement for a detached ADU serves as a limiting factor. Ms. Murray asked Mr. Smith to explain the intent of his proposal for an additional requirement, which he labelled 6.6.5 (h) that would require a 20 percent larger lot in order to build a detached ADU. Mr. Smith clarified that the intent was to insert this in addition to one of the options for ADU size requirements. Chair Horgan noted that the Building Inspector believed the larger lot requirement to be too restrictive. Mr. Landry's concern with the 20

percent requirement is that in some instances, even with a minimum sized lot, the existing conditions may be more conducive to a detached ADU.

Chair Horgan observed that the intent of the existing ordinance is to prohibit two houses on one lot. Ms. Murray noted that the common ownership and owner occupancy requirement distinguish an ADU from a second house.

Pertaining to the potential for a very large, possibly 2000 square foot ADU, Ms. Sofio observed that while the two bedroom limit might apply, there is the potential to add dens and offices that could effectively be used as bedrooms. Chair Horgan indicated that she was disinclined to allow 2000 square foot ADUs. Mr. Landry suggested that in addition to a proportionate size limit, i.e. one third of the principal dwelling unit, an upper limit cap of, perhaps 1500 square feet might be appropriate.

Chair Horgan suggested a 1000 square foot limit. Ms. Murray, considering the circumstances in which a 1000 square foot ADU might appear to be disproportionate to the primary dwelling, thought that concern might only apply to the Historic District lots that would already be restricted by lot size requirements.

Mr. Landry advocated for a proportional limit with an upper limit cap and proposed language for a third option, which members supported, indicating their preference that it apply to both attached and detached ADUs. With input from members, Mr. Landry summarized the Board's consensus in draft language:

An ADU may contain no more than one third of the primary dwelling building area, not to exceed 1200 square feet, and no less than 300 square feet.

At the invitation of Chair Horgan, Mssrs. Smith and McDonald voiced their support for the new language.

Procedurally, Chair Horgan explained that the draft language will be rewritten ahead of another Public Hearing next month because it is a significant change from the previous draft.

- b. Section 9.3.4 Historic District Commission: Amend section 9.3.4.2: Terms of Office, Officers, Vacancies, and Removal:**
 - i. Section a. – Add wording on Nominations.**
 - ii. Section e. – Correct the lettering and include wording on Nominations.**

- c. Section 9.3.7.3: Hearings and Notices**
 - i. Add verbage pertaining to a first hearing.**
 - ii. Add verbage pertaining to a final hearing.**
 - iii. Add verbage pertaining to number of days to render a decision.**

At 9:19 p.m, Chair Horgan opened the Public Hearing for changes to the Historic District Commission (HDC) section of Ordinance 9.3.4.2 and Ordinance 9.3.7.3 as written on the document dated February 22, 2017. There being no public comment, Chair Horgan closed the Public Hearing at 9:20 p.m.

Ms. Murray, Ms. Sofio, and Mr. Potter voiced their support for the changes.

5. Review and approve minutes to the meeting on January 25, 2017.

Mr. Landry motioned to approve the minutes as written from January 25, 2017. Ms. Murray seconded. Motion carried

unanimously.

6. Old Business.

No old business was reported.

7. New business.

The March meeting of the Planning Board is scheduled for March 22, 2017. Chair Horgan notified the Board of her planned absence and Ms. Murray agreed to act as Chair.

Adjourn.

There being no further business, Mr. Landry moved to adjourn and Ms. Sofio seconded the motion. The motion carried, unanimously.

The meeting adjourned at 9:23 p.m.