

1 **APPROVED *** APPROVED *****

2 Planning Board Meeting
3 Town Hall
4 Monday, December 12, 2016
5 12:00 p.m.
6
7

8 **Discussion about proposed changes to the Accessory Dwelling Unit (ADU) section of the**
9 **New Castle zoning ordinance.**

10
11 **Members Present:** Darcy Horgan, Kate Murray, Geof Potter, Bill Stewart, Margaret Sofio
12

13 **Others Present:** Tom Smith, Ken McDonald, Holly Biddle
14

15 **Members Absent:** Tom Hammer, Rich Landry
16

17 Chair Horgan called the meeting to order at 12:09 p.m. and noted the voting members: Darcy
18 Horgan, Bill Stewart, Kate Murray, Margaret Sofio, as well as Geof Potter, who was elevated to
19 voting member. She specified that it is an official meeting of the Planning Board, but the public
20 is invited to assert their questions and comments.
21

22 1. **Continue discussion about incorporating the new RSA on Accessory Dwelling**
23 **Units (ADU) into the New Castle Zoning Ordinance.**
24

25 Chair Horgan placed a copy of the new RSA (674:71, 674:72, 674:73) in the ADU file.
26

27 Mr. Potter led the group through a working draft of the proposed New Castle Zoning Ordinance
28 section 6.6, an amalgamation of existing ordinance, new RSA requirements, and previous
29 Planning Board input, in order to reach agreement on content and add new items. Wordsmithing
30 can happen later. Once there is consensus among the Board members, the document will be
31 reviewed in public hearings and by legal.
32

33 6.6.1 Authority

34 New section, added to establish reference to the RSA. Ms. Sofio believed it was useful to
35 include. *No disagreement.*
36

37 6.6.2 Purpose

38 Items (a) through (d) are from the RSA. Item (e) originated from the existing town ordinance. *No*
39 *objections. No additions.*
40

41 6.6.3 Definition

1 Lifted from the RSA, but with added language about a detached structure. Ms. Sofio agrees with
2 using the statutory definition. She wondered whether, in the event the town decides to allow
3 detached ADUs, the definition should be specific: (a) for attached ADU, (b) for detached ADU.
4 Mr. Potter noted the need to define a detached ADU. Ms. Murray asked whether there is a need
5 to specify the difference between a detached structure that incorporates an ADU, and a
6 detached structure that is solely an ADU. There may be a need to make the distinction later in
7 the draft document but Mr. Potter did not think it needed clarification in the definition section.
8 There was no follow up discussion about the Board's preference for one version of detached
9 over the other.

10
11 Mr. Stewart asked, and Mr. Potter confirmed, that the RSA does not require the town to allow
12 detached ADUs, but that at the October Planning Board meeting there was general consensus
13 for detached ADUs pending further discussion including: clarification of the definition, input from
14 absent members, and establishment of provisions for space and lot size. Mr. Stewart and Chair
15 Horgan, who were absent in October, weighed in with their support for detached ADU's.

16
17 Ms. Sofio recalled from the Board discussion in October, that while the RSA allows the town to
18 limit to one ADU, it also allows the town to permit more than one, if that is deemed appropriate.
19 Chair Horgan noted that the October minutes reflect that members prefer not to allow more than
20 one ADU per single family dwelling, which would eliminate the possibility of having both an
21 attached *and* detached ADU. After confirming that members' consensus is for a one ADU limit,
22 *and hearing no dissent, Chair Horgan noted this as a decision, that the number of ADU's per*
23 *single family dwelling be limited to one.*

24
25 Mr. Stewart asked whether this would re-categorize one unit in an existing, zoned, two-family
26 unit as an ADU and preclude adding an ADU to either of the units. Mr. Potter answered that the
27 new RSA only applies to single family dwellings. Chair Horgan elaborated that according to the
28 RSA, if single family dwellings are allowed in a zone, then ADUs must be allowed in that zone.
29 But if two-family dwellings are also allowed in that zone, it doesn't allow for the addition of ADUs
30 to two-family dwellings. Ms. Murray asked what the difference is between a single residence
31 with ADU and a two-family residence. Chair Horgan responded that for a two-family house, all
32 the other requirements need to be met, including density. For an ADU, towns cannot increase
33 the amount of acreage required or change coverage limits, whereas with a two-family, the lot
34 coverage could be limited. Mr. Stewart asked for confirmation that ADUs don't apply to the
35 coverage calculation. Chair Horgan responded that she believed that is true. Mr. Stewart
36 pointed out that the town's proposed requirement for a twenty percent larger lot (in section 6.6.5
37 (h) to be discussed later), only applies to detached ADUs which aren't bound by the RSA
38 requirement. Concerns about lot size and ADU size will be addressed in detail later, in section
39 6.6.5 (g) and (h).

40
41 Regarding whether there should be a limit on the number of occupants in the ADU, Ms. Sofio
42 checked with U.S. Department of Housing and Urban Development (HUD) because the HUD
43 maximum occupancy standards are referenced in the RSA. HUD's limit is two occupants per
44 bedroom but exceptions arise. For example, a couple, living in a one-bedroom ADU, have a

1 baby and become illegal, despite it being a comfortable living arrangement. Chair Horgan
2 concluded that, given the potential pitfalls, the town may not want to address occupancy.

3
4 Mr. Potter asked and *received acknowledgement from the Board that they agreed with the*
5 *proposed section 6.6.3 as presented, noting that if there is any ambiguity, the lawyers will*
6 *address it.*

7
8 Mr. Smith questioned whether, given his lot size of seven acres, he would be allowed seven
9 dwelling units. Mr. Stewart answered that the lot would need to be subdivided in order to allow
10 one dwelling unit per acre.

11
12 Ms. Biddle asked for clarification about the size of ADUs which Chair Horgan answered would
13 be addressed later in the discussion.

14 15 6.6.4 Conditional Use Permit required

16
17 At the October meeting, there was consensus for Planning Board jurisdiction, as opposed to the
18 other choices: allowing ADUs by Building Permit, or by Zoning Board Special Exception, which
19 how it is currently managed. Chair Horgan supports this direction. Mr. Potter added that while it
20 may increase the workload of the Board, it won't likely be by a significant amount. Ms. Sofio
21 suggested that after some experience with application of the new regulations, they may want to
22 assign certain types of ADU to the Building Inspector for standard permitting. Mr. Stewart
23 suggested that ultimately, approvals should reside with the Building Inspector, with the
24 exception of subjective decisions related to building character.

25
26 *Mr. Potter asked and received agreement from the Board that Conditional Use will be the*
27 *method for permitting ADUs.*

28 29 6.6.5 Criteria for Conditional Use Permit

30 (a) Mr. Potter read the proposed section pertaining to a maximum of one ADU per property and
31 noted the limitation "within districts that allow single-family dwellings" that was discussed earlier.
32 The language covers "within or attached or detached." The group discussed which definition,
33 attached ADU or detached ADU, would include attachment by breezeway, and wondered if
34 there are implications one way or the other. (The breezeway discussion continues in discussion
35 of section 6.6.5 (b))

36
37 Ms. Sofio suggested a language change from "must be located" to "may be located" since must
38 is more of a requirement, but the Board intends to say that it can be one way or the other. *Mr.*
39 *Potter agreed and none dissented.*

40
41
42 (b) Mr. Potter read the proposed section pertaining to ingress and egress of attached ADUs.
43 The proposed section is an amalgam; it includes the full RSA, plus the elements from the
44 current town ADU ordinance, principally the "separate, side or rear-facing door."

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Locked Door

Ms. Sofio read the proposed language pertaining to the interior door connecting the principal dwelling to the ADU and noted it was required by the RSA. Further, the RSA specifies that the town “shall not require that it remain unlocked” but Ms. Sofio agreed that the town ordinance did not need to address whether the interior door was locked or unlocked.

Breezeway Attachment

Mr. Stewart wondered how a breezeway-attached ADU would be classified given the requirement for a “shared wall or roof.” Ms. Murray asked how a breezeway’s roof connection figured in. Mr. Stewart noted the need for clarity because a detached ADU’s breezeway square footage would factor into the lot coverage calculation, while an attached ADU’s breezeway would not. If a shared wall is a requirement for an attached ADU, then a breezeway leads to a detached ADU. Chair Horgan did not remember the reference to a shared roof (contained in the proposed ordinance) in the RSA and asked about the source of the roof reference. Mr. Potter believed it was pulled from the Rockingham County Model Ordinance.

Chair Horgan asked the Board for feedback about whether attached by roof should be included in the definition of attached ADU. Ms. Sofio thought that it would be a significant decision if the town were not also allowing detached ADUs. Further, without the presence of interior door between units, the ability to conform to the attached ADU requirements is uncertain. Chair Horgan suggested removing “roof” from the ordinance language, to cause attached by breezeway ADUs to be detached ADUs. This better matches the Board’s intent to include the breezeway calculations for coverage and density, etc. in order not to overburden the land, and in light of the possibility that the breezeway is later enclosed as a room. *The group concurred with removing “roof” from the ordinance.*

Side or Rear Door

Chair Horgan asked for comment about the proposed language “...be an enclosed structure with separate, side or rear facing door.” Ms. Murray wondered whether a front door would be allowed. Ms. Sofio noted that the expectation is that there is an existing front door, but Ms. Murray suggested that it would not be for the ADU, in case of fire. Ms. Sofio’s concern was whether the front door restriction would be appropriate for primary dwellings that are acclimated to the side of their lot. Their “front door” may be on the side, they may plan the ADU for the front. Mr. Stewart asked about the intent of the restriction, which came from the existing town ordinance. Mr. Potter and others guessed that the intent was to preserve the character of the dwelling, to not appear as a duplex. Chair Horgan, in noting that it would then be a design standard, indicated that she would like to consult with the Building Inspector. Her feeling is that it is an unreasonable limitation. Ms. Murray didn’t agree as long as there was an ability to get out. Ms. Sofio suggested that language be changed to “exterior door” as opposed to side or rear facing door.” Ms. Murray expects that the aesthetic issues will be addressed if and when an application goes to the Town of New Castle Historic District Commission (HDC). There is doubt that HDC would allow two front doors.

1 Ms. Sofio stated that current Town of New Castle ordinance 6.6.2 (4) states that “all accessory
2 apartments shall have an entrance which provides safe and reasonable means of ingress and
3 egress.” Chair Horgan noted the relevance of current ordinance 6.6.4 (2) that states “The
4 Accessory Apartment must be designed so that the appearance of the building remains that of a
5 single family dwelling. Any new entrance shall be located on the side or rear of the building.” It
6 only applies to an attached ADU; a detached ADU could still have a front door. By addressing it
7 as proposed, attached ADU door locations are limited to the side or rear, which Mr. Stewart
8 supports, noting that he would not like to see two side by side front doors. Chair Horgan
9 responded the result would limit a design feature and thought she could accept two front doors if
10 it were a fitting design. Ms. Sofio stated that the limits are set in the current town ordinance,
11 stressing “that the appearance of the building remains that of a single family dwelling.” Mr.
12 Stewart believes that a (second) front door is inconsistent the intent of the current ordinance.
13 Ms. Murray stated that the purpose of the egress is for fire safety and whether the door is front,
14 rear, or side does not matter. Mr. Stewart added that if adverse conditions exist (i.e. surrounded
15 by precipitous ledge drop off) then there is the option for hardship appeal to the New Castle
16 Zoning Board of Adjustment (ZBA) for a variance for a front door. Mr. Stewart believes that in
17 return for allowing ADUs and giving up coverage calculations, applying limits that require design
18 in the character of a single family dwelling and only one front door is reasonable. *With no*
19 *arguments against, the Board agreed to leave in the side or rear door requirement.*

20

21 Ingress Egress

22 Chair Horgan indicated the requirement for an “independent means of ingress and egress” is
23 from the RSA and the Building Code, and therefore is necessarily included in the ordinance. Ms.
24 Sofio asked whether they might add any
25 more language about “safe and reasonable means of ingress and egress”, which is in the
26 current ordinance. Ms. Murray, noting it as a safety issue, suggested adding “independent, safe
27 and reasonable means of ingress and egress.” Mr. Stewart wondered and Mr. Potter affirmed
28 that ingress and egress are already defined in the Fire Code or Building Code with size
29 specifications for windows and doors. Accordingly, Mr. Stewart wondered whether the proposed
30 ADU ordinance language could reference the existing code requirements. Chair Horgan
31 believes it is redundant because a Building Permit would not be issued if ingress and egress
32 weren’t up to code. Mr. Stewart asked and Chair Horgan answered that a fire door is not
33 required between the two dwellings, despite having separate cooking and being separate units.
34 While they would be required to meet code, Mr. Stewart noted that code for a two-family
35 dwelling requires a fire door and questioned which code applies, single family or two-family
36 dwelling. Compounding the confusion over ingress and egress, Mr. Stewart added that the
37 connecting door might, or might not, be locked. Chair Horgan suggested that the Building
38 Inspector weigh in on the question. Ms. Murray thought that the proposed language would cover
39 these nuances, but would be glad to hear how the Building Inspector interprets it, and if he finds
40 it lacking.

41

42 *Consensus is that there is an open question regarding code compliance relative to ingress and*
43 *egress.*

44

1 (c) Mr. Potter read the proposed section pertaining to the application of single family dwelling
2 regulations for ADUs but with an added parking requirement. Parking is the discussion point,
3 including the question of whether stacked parking would be allowed, and in particular, in a
4 situation with a car parked on a driveway behind a garaged car. Chair Horgan responded that
5 stacked parking was outlawed in the town's ordinance. She could not recall what the Building
6 Inspector said about garage-stacked parking. Chair Horgan read the portion of the current town
7 ordinance related to the stacked parking question: "no 'stacked' parking shall be permitted
8 unless... the required number of off-street parking spaces set forth in section 5.1 are met or
9 exceeded without the use of stacked parking....[and, it doesn't] occur continuously for periods in
10 excess of 24 hours". Further, "the location and extent of said 'stacked' parking shall be subject
11 to the approval of the Planning Board." Mr. Potter summarized that the two parking spaces
12 needed for an ADU must be two open (unstacked) spots. Ms. Murray asked and Ms. Sofio
13 affirmed that it means that a lack of parking would prevent an ADU approval, unless an
14 applicant sought and received a variance.
15

16 Ms. Biddle described her parking area (garage and driveway behind plus one space on the side)
17 and the Board agreed that this wouldn't meet the requirement. Chair Horgan asked Ms. Biddle
18 whether she had the building space for an ADU, to which she responded that she was trying to
19 determine that, because she would like to have the extra income. Ms. Murray explained that the
20 goal is not to create a situation in which everyone can add an ADU; there will be situations in
21 which it is not appropriate. But she is hoping not to restrict it to the extent that it would prohibit
22 ADUs where it might make sense. Parking is a safety issue.
23

24 Mr. Stewart asked whether a one bedroom ADU would require two spaces, maybe one spot per
25 bedroom would be a solution. Ms. Murray responded that there could easily be a couple that
26 has two cars. And, because the number of occupants can't be stipulated, it doesn't work as a
27 limiting factor. Ms. Sofio responded that the RSA requires that HUD regulations govern
28 occupancy but while they specify two occupants per bedroom, they are struggling with multiple
29 exceptions, especially with the addition of children. Mr. Stewart noted that children wouldn't add
30 to the car count.
31

32 Ms. Biddle asked why the landlord could not specify only a single tenant, single car. Ms. Sofio
33 thinks that while one space seems logical, two seems restrictive. Mr. Stewart believes it is
34 necessary to address parking in the ordinance because there are safety and fire issues
35 downtown. If the ordinance specifies two spaces, then there is the opportunity to apply for a
36 variance that might require signing a restriction for occupancy. In that case, the variance would
37 run with the land and would be hard to enforce.
38

39 Chair Horgan noted that Portsmouth bases parking requirements on square footage: one space
40 for 400 square feet and two for over 400 square feet. Ms. Murray answered that a square
41 footage based requirement still wouldn't address the parking issues downtown.
42

43 Ms. Sofio proposed this be reserved for future discussion. Ms. Murray wondered whether any
44 new or clarifying information would be forthcoming from legal or the Building Inspector. Chair

1 Horgan thought that the Building Inspector and Fire Chief may have input. Mr. Stewart added
2 that from a Select Board perspective, parking in general is a concern, so that this issue should
3 be considered seriously. Ms. Murray pointed out that the overburden of parking might obstruct
4 the passage of the ordinance change at Town Meeting. Ms. Sofio suggested that maybe parking
5 requirements could be tied to zoning districts. Chair Horgan suggested taking the issue to the
6 Select Board for their input. Mr. Stewart responded that they would want to have input about
7 public safety from the Chief of Police and suspects there would be a concern in areas where
8 there are blind corners, where there isn't good street parking. Given the concerns, Chair Horgan
9 suggested that maybe parking restrictions are a way to discourage ADUs in the crowded
10 downtown area. Ms. Biddle added that the downtown residents are most likely to need the
11 added income. Chair Horgan and Mr. Stewart added that it wouldn't be impossible, but with an
12 impact plan, application could be made for an exception. Ms. Biddle asked and Chair Horgan
13 answered that the town's attorney will look at the language after the Board has worked through
14 the proposed language, before the public hearing. While this discussion has solidified a good
15 argument for two spaces, *Chair Horgan wants to seek input from the Chief of Police and*
16 *possibly the Fire Chief.*

17
18 (d) Mr. Potter read the proposed section pertaining to water and sewer. *There being no*
19 *objection to the proposed language*, Mr. Potter continued.

20
21 (e) Mr. Potter read the proposed section pertaining to owner occupancy. Ms. Sofia explained
22 that the RSA's requirement for the owner's "principal place of residence" is a lower standard
23 than "legal domicile." The town cannot require a higher standard than the statute. Ms. Murray
24 expressed concern for a scenario where a summer owner/resident would be allowed to lease
25 their dwelling unit during their winter season absence, resulting in occupancy by two leasees.
26 Owner occupancy presumes a level of care and consideration for the property that isn't present
27 when the owner is absent. Ms. Sofio agrees, but again noted the restrictions of the statute.
28 Reading from the RSA 674.72.VI "A municipality may require that the owner demonstrate that
29 one of the units is his or her principal place of residence, and the municipality may establish
30 reasonable regulations to enforce such a requirement", Ms. Murray asked whether the town
31 could require that the dwelling is actually where the owner lives. Ms. Sofio believes that the
32 owner occupant requirement would mean that the owner's unit could not be leased in their
33 absence. While they don't always have to be present, they couldn't rent it out. Ms. Murray
34 clarified that her concern was over sublets, not temporary occupants such as VRBO or dog
35 sitters.

36
37 Ms. Sofio noted that infractions will be difficult to identify. Ms. Murray asked that language
38 clearly state that the owner must occupy one unit, to which *Ms. Sofio proposed, and the group*
39 *concurred with, the language, "The owner must occupy one unit."*

40
41 Chair Horgan asked how the owner occupancy might be monitored. Ms. Murray offered that
42 there is an expectation of civic responsibility for neighbors to notify the town. Mr. Stewart
43 suggested the result might be even more confusing, especially in light of the VRBO variable. It
44 was noted that given the state's plans for separate VRBO provisions, the town shouldn't be

1 concerned with that issue until the guidelines are published, which will hopefully be before May,
2 2017. As the town may “establish reasonable regulations to enforce” owner occupancy, Ms.
3 Sofio suggested that the owner sign some sworn statement that they will remain the occupant.
4 Chair Horgan asked whether the town might add a provision that the unit not be leased for less
5 than six months at a time but until state guidelines for VRBO are released, consensus was not
6 to address the rental time period. *Chair Horgan noted that the issue will go to legal.*

7
8 Death of an owner posed another concern. An heir might inherit a two-unit home but not want to
9 live there. Chair Horgan noted that situation would require a variance. Ms. Murray would be
10 concerned that the situation is essentially that of a duplex, which she opposes. Because the
11 town can’t force the sale of the property she suggested that a daily fine be implemented for non
12 compliance with owner occupancy. Mr. Stewart wondered whether the ADU could be left open,
13 calling it owner occupied, while leasing only the larger unit, adding that maybe there could be a
14 six-month grace period to sort things out.

15
16 Mr. Smith believes that there needs to be thought about how and why the proposed restrictions
17 differ between those imposed on a single-family house without an ADU.

18
19 *The group agreed to seek legal advice about owner death issue. Chair Horgan also intends to*
20 *ask legal to be certain that the language prevents the ability for the ADU to be*
21 *condominiumized.*

22
23
24 (f) Mr. Potter read the proposed section pertaining to aesthetic continuity. The language
25 originates from the current town ordinance 6.6.4 (2). Chair Horgan questioned who will approve
26 the plans and if renovations require Planning Board design approval, wondering whether this is
27 something the Planning Board should take on. Ms. Murray noted that this burden will likely fall
28 on the HDC, but wondered whether there is desire for design control outside of the Historic
29 District. Chair Horgan answered that maybe having this oversight is acceptable since the
30 applicant will be coming to the Board for a permit. Mr. Stewart wondered if this would require an
31 objective definition. Ms. Murray believes the language, “shall maintain aesthetic continuity with
32 the principal unit” provides clarity of expectation.

33
34 *The group agreed to leave the language as proposed.*

35
36
37 (g) Mr. Potter read the proposed section pertaining to ADU size pointing out that it states that
38 the ADU can’t be less than 300 square feet, and, by town choice, can’t be more than 800
39 square feet. And, it cannot increase the size of the liveable area of the combined units by more
40 than one-third.

41
42 Mr. Smith asked that the Board consider not expressing the maximum in terms of square
43 footage but allowing the one-third requirement to set limits. Ms. Sofio offered that the maximum
44 size could be expressed as an either, or: “800 square feet or one-third the size, whichever is

1 larger.” Mr. Stewart noted that could result in a fairly large ADU, and without a corresponding
2 acreage requirement. By keeping the 800 square feet requirement, the ZBA would be the path
3 to a larger ADU.

4
5 Another interesting way to look at it might be that if an ADU can comply within the lot
6 calculations, then maybe a larger ADU could be allowed. The concern might be that the ADU
7 regulations might be used to build a two-family, given that the size of the ADU could end up as
8 high as 2000 square feet. Ms. Murray endorses an 800 square foot cap, with the ability to apply
9 to the ZBA for exception. Mr. Stewart asked what the hardship would be. ZBA can be
10 complicated and expensive with no guarantee of approval, therefore if it is reasonable, it would
11 be good to come up with language to accommodate those, like Mr. Smith, with much larger lots.
12 Mr. Potter believes that language could be crafted to set an 800 foot maximum unless all other
13 requirements for density and coverage can be met, up to one-third of the combined area. There
14 is still a concern about an ADU as large as 2000 square feet.

15
16 Chair Horgan believes the size requirement warrants seeking the opinion of the Building
17 Inspector and others, possibly even looking at the properties in town, to understand the impact
18 of the square footage requirement. The group agreed to be judicious with the amount of legal
19 advice they seek.

20
21 2. Adjourn

22
23 There being a time conflict for Board members, Chair Horgan continued the discussion and will
24 post the time.

25
26 *Mr. Potter MOVED to adjourn the December 12, 2016 meeting of the New Castle Planning*
27 *Board at 1:54 p.m. Ms. Murray SECONDED. The motion was APPROVED unanimously.*

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29 Respectfully submitted by,

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31 Anne Miller, Secretary the New Castle Planning Board
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