

Approved: February 24, 2016

New Castle Planning Board
Wednesday January 27, 2016
7:00 PM

PUBLIC HEARING: Applicant, David F. Mahoney Jr. Trust, 106 Beach Hill Road, Map 10, Lot 30 for a Conditional Use Permit to construct a replacement advanced treatment wastewater disposal system that is partially within the 100' tidal wetlands buffer and removal of the existing leach field that is partially within the 50' Class B wetlands buffer.

Members Present: Chair Darcy Horgan, Margaret Sofio, Lorn Buxton, Tom Hammer, Rich Landry

Members Not Present: David McArdle, Kate Murray

Others Present: Susan Faretra, Todd Baker, Dave McGuckin

Chair Horgan called the meeting to order at 7:01 pm and noted that the voting members for the evening would be Lorn Buxton, Tom Hammer, Margaret Sofio, Rich Landry and herself.

1. Welcome Rich Landry, new Alternate member to the Planning Board

Chair Horgan welcomed Rich Landry to the Planning Board and his first meeting.

2. Review and approve minutes to the meeting on December 16, 2015

Tom Hammer MOVED to accept the December 16, 2015 Planning Board minutes as written; this was SECONDED by Lorn Buxton and APPROVED unanimously.

3. **Public Hearing for applicant, David F. Mahoney Jr. Trust, 106 Beach Hill Road, Map 10, Lot 30 for a Conditional Use Permit to construct a replacement advanced treatment wastewater disposal system that is partially within the 100' tidal wetlands buffer and removal of the existing leach field that is partially within the 50' Class B wetlands buffer.**

Chair Horgan opened the Public Hearing at 7:03 pm.

Susan Faretra presented the application for 106 Beach Hill Road, Map 10, Lot 30. She said there is a failed septic system on the property that needs to be replaced. Ms. Faretra noted that the property is located at the end of Beach Hill Road and has setbacks from both tidal water and poorly drained fresh water soils. She said that the home is a year round home that is served by the municipal water supply. Ms. Faretra explained that the existing septic system has a septic tank located at the end of the driveway and a leach field that is partially located on an abutting property. She said the owner of that property, John F. Cotton, has given his permission to remove the leach field that is partially located on his property. Ms. Faretra noted that the existing system does need to be removed and they are requesting permission to replace it with a Clean Solution aerobic system with a new leaching area. She said she has presented to the Conservation Commission, the Zoning Board of Adjustment and has State Wetland and State Conservation approval, making the Planning Board the last board whose permission is required.

Ms. Faretra said the application meets all the criteria for a Conditional Use permit; 1) there is *not* another location on the property where the system can be constructed due to the constraints of buffers, a road, a waterline, ledge outcroppings, trees and a substantial stone wall; 2) the location of the leach field and tank meet all setback requirements and therefore is minimizing the impact; 3) there is no feasible alternative to the plan being submitted; 4) the upgrade of the system is a benefit to all (owners, residents and the Town) and creates no hazard, rather improves the existing situation; 5) all necessary permits have been received from the State and the Town and finally 6) the proposal creates no impervious surface. Ms. Faretra said there will be one tree removed which will be replaced and there will be a change of grade over the tank area in order to grow grass (approximately half a foot). She said the Conservation Commission did not have an issue with the grade change and felt it would be an improvement to the runoff situation.

Chair Horgan asked if the system requires a maintenance contract.

Ms. Faretra said there is a required maintenance contract which the owners have signed.

Chair Horgan asked for a copy of the maintenance contract to be put on file with the Town and Ms. Faretra agreed to this request.

It was noted that the maintenance contract consists of installing company monitoring and maintaining the system on a regular schedule for the life of the system.

Chair Horgan asked for any comments from the public; there being none she closed the public comment portion of the Public Hearing at 7:20 pm.

Chair Horgan asked the members for any comments/ questions regarding the proposal.

Margaret Sofio MOVED to approve the application of the David F. Mahoney Jr. Trust, 106 Beach Hill Road, Map 10, Lot 30 for a Conditional Use Permit to construct a replacement advanced treatment wastewater disposal system that is partially within the 100' tidal wetlands buffer and the removal of the existing leach field that is partially within the 50' Class B wetlands buffer as presented per the plan dated 12/28/2015 subject to the approvals of the Conservation Commission, the Zoning Board of Adjustment, the State Wetlands and State Septic Boards and the maintenance contract being placed on file with the Town of New Castle; this was SECONDED by Lorn Buxton and APPROVED unanimously.

4. Old Business

a. Update from Planning Board members on ordinance changes progress

Chair Horgan distributed a proposed outline for an emergency leach field replacement ordinance. She explained that the process to replace a septic system (such as the one presented this evening) can be lengthy. Chair Horgan noted when a system is failing and causing issues it is in the Town's and the applicant's interest to have the replacement done as quickly as possible. She said the Building Inspector suggested a process to shorten the time period for approving these systems. Chair Horgan said the recommendation includes creating a three-person committee to approve a plan to replace a failed or failing septic system without going through any of the usual land use committees. She said the three-person committee would consist of the building inspector (or assistant), the Chair of the Conservation Commission (or a designate), and the Chair of the Select Board (or a designate). She noted a definition of "septic failure" and where the ordinance should be located in the book is needed. Chair Horgan suggested including the ordinance be under 9.2.8, "Wetland Buffers".

Lorn Buxton suggested that the makeup of the committee have the Select Board representative to the Planning Board (or their designate) instead of the Select Board Chair. He explained that the Select Board is not a Land Use committee.

Chair Horgan said the Building Inspector recommended including the Select Board on the new committee. She said Mr. Graves felt that since the Select Board is not normally involved in the land use process, that a representative from the Select Board would be more likely to question the process. Chair Horgan agreed that the Select Board representative to the Planning Board would work.

The members, Susan Faretra and Todd Baker discussed the proposed wording of the ordinance.

Changes to wording: 1) insert "Select Board representative to the Planning Board or a designate of each", 2) "...deemed to be in failure by a licensed leach field designer or licensed site assessor" to "deemed to be in failure in writing by a NH Permitted subsurface system designer/installer or a GSDI Permitted septic system evaluator".

It was questioned why a system has to be in failure to be replaced through this system. Chair Horgan noted that this system is being set up to deal with emergency situations only.

Ms. Faretra noted that if the system is proposed to be built in the tidal wetlands buffer, the plan would still need to go to the full Conservation Commission per the State Wetlands Bureau regulations. She also noted that the Building Inspector needs to sign off on the plan (pending Board approval) before it is submitted to the State of NH.

Chair Horgan will rewrite the proposed ordinance to include comments discussed and distribute to the members for their immediate review and response.

Discussion of where the ordinance should be placed in the Zoning Book:

Chair Horgan suggested placing the ordinance in 9.2.8 Wetland Buffers as point #2.

Mr. Buxton Lorn suggested having it become 9.2.8 #7 (at the end before appeals section).

Chair Horgan said the rest of 9.2.8 does not discuss septic systems, which was why she suggested having it be point #2. She said having it placed there puts it in with the portion of that section that discusses wetlands and buffers.

Mr. Buxton felt that the process is an exception so would fit well in the section just prior to the appeals section.

Margaret Sofio noted that if the ordinance is 9.2.8 #7, it is followed immediately by the section on appeals, which works well.

Mr. Buxton suggested that it could also be placed in 9.2.10.

Chair Horgan noted that section 9.2.8 is the only section that discusses waste water disposal systems and placing it there would allow applicants to find the exception there as well. She said if it is placed under the appeal section it may be missed by an applicant.

Mr. Buxton said if the ordinance is placed in 9.2.8 #2 it is being inserted as an exception procedure in an area where there is no reference to the normal procedure.

Mr. Hammer noted that it is a variance to the process and suggested placing it in 9.1.10 #5 (which is about variances and appeals).

Margaret: after 9.2.8 #1 and make this #2 or place it just before appeals. Good argument for keeping all the discussion septic systems together.

It was decided that Chair Horgan would research the placement of this ordinance and distribute the information discovered to the members.

Todd Baker noted that special exceptions need to be approved by ZBA, so it should not go there.

Ms. Faretra said it would make sense to have it in the section where wetland setbacks are being discussed; or to reference it in that section.

Mr. Baker suggested putting it under 9.2.11, Emergency Relief and give it its own section.

Chair Baker said the ordinance will use the State definition of septic failure and add that definition to the definition sections under Septic Failure.

ZBA ordinance issues.

Mr. Baker said there are two issues that the ZBA has with the ordinance: 1) septic systems in the setback and 2) maximum building area within a lot. He said some work needs to be done on the definitions because they conflict with each other.

Mr. Baker noted that in Section 4.2.1.5, the Building Inspector uses this calculation on the lot size to determine how large a home can be built. He said the definition of the word home has several different characteristics and are not consistent. Mr. Baker said the "maximum building area" is a defined term, but the next part references "maximum building area in a *dwelling unit*" and the definition of dwelling is different than "building area". He said this becomes an issue in deciding if garages are included in the calculation (which they would not be if using the definition of dwelling). Mr. Baker said that typically garages have been included in the calculation, however some attorneys have pointed out the ambiguity of the ordinance. He said the wording needs to be clarified and either use the term "building area" or "dwelling unit".

Mr. Baker noted that the term "building area" could also use some clarification. He said that in some cases walkout basements have a door but not enough space to stand up in, so therefore it is not a living space but is a crawl space with a door on it and it should not be considered living space. Mr. Baker said the walkout basement should be habitable space and better definitions would make things easier. He asked where the definition for a walkout basement is located in the zoning.

Chair Horgan said it is located on page z8.

Mr. Baker suggested adding that to the definition; it should stress that the space should be habitable.

Chair Horgan suggested that Mr. Baker discuss this with the building inspector and come to an agreement.

Mr. Baker said he would meet with the Building Inspector; noting that the most important issue is the section that discusses dwelling and building area. He asked what the time frame is to get changes accomplished for this year.

Chair Horgan said if the change requires one Public Hearing, it can be discussed at the February Planning Meeting and then schedule a Public Hearing for after that. She suggested working with the Building Inspector and submitting the verbiage to the Planning Board to vote on at the February meeting and hold the Public Hearing in March. She said that April 4th is the last day for the Planning Board to hold a final public hearing on adoption of changes to the ordinance.

Mr. Hammer suggested capitalizing, bolding or italicizing definition terms in the book.

Issue of Enforcement - Tom Hammer said he gathered information from the City of Portsmouth and discussed how they handle nonconformance. He said that Portsmouth hired a land use compliance agent who looks at recommendations from all the boards, looks at the plans submitted then reviews the site to see what is actually being built. Mr. Hammer said that Portsmouth also requires a sworn affidavit from the architect and the engineer saying the project was built as approved by the boards. He suggested having representatives from one of the boards involved in the approval process view the site prior to completion and award or not award a certificate of compliance. He also suggested having the engineer or contractor sign an affidavit confirming that the project was built as approved by the appropriate boards. Mr. Hammer also suggested having a line added on the permit card for "certificate of compliance".

Mr. Buxton said that the Building Inspector has noted that better and more specific from the various land use boards is needed.

Ms. Sofio suggested required a Certificate of Compliance to begin with.

Mr. Landry said that having a compliance certificate is good; but it needs to be a limited.

Mr. Hammer referenced a particular case where the engineer included very poorly drained soils in his calculations even though this is not allowed. He said having the engineer be required to certify this project may have stopped that from happening; it would also give the Town recourse and be a deterrent.

Mr. Hammer suggested writing up a brief on this for the members to review.

Chair Horgan agreed there is an issue. She said addressing the issue has already begun by getting knowledgeable people on the boards. She said the Building Inspector needs to be involved in this process. Chair Horgan said she has never received input from the building inspector that conditions of approval were not sufficient. She said he needs to know that he should let the boards know when conditions of approval need to be worded better.

Measuring setbacks from the "right of way" – Lorn Buxton

Mr. Buxton noted that the Building Inspector does not interpret or enforce the measuring of setbacks from the "right of way", instead he uses the property line. He said he discussed this with Don Graves and feels the easiest way to address this is by telling the Building Inspectors to enforce the ordinance the way it is written.

Affordable Housing – Lorn Buxton

He said there is not much availability to build affordable housing on the island, but he found that there is a NH Municipal Technical Assistance grant program. Applications are due April 4th and are in the amounts of \$2500 to \$10,000 to have an individual review the situation in town and determine if anything can be suggested toward this end.

Chair Horgan asked if she could provide the information to an individual in town who had brought the topic up. Mr. Buxton said he would provide the information to Chair Horgan for her to forward.

Density factor for Wentworth property (Section 6.1.4.2.d) – Lorn Buxton

Mr. Buxton suggested adding the following calculation to determine the adjusted area for purposes of maximum coverage and living area: $1 + (20.43/59.54) = 1.3431$

Chair Horgan said it makes sense to add the calculation.

Margaret Sofio MOVED to amend the zoning ordinance Section 6.1.4.2.d to include the addition of: "The calculation, as developed, follows: $1 + (20.43/59.54) = 1.3431$ is the multiplier to determine adjusted area for purposes of maximum coverage and living area"; this was SECONDED by Rich Landry and APPROVED unanimously.

Cell Tower Regulations: Margaret Sofio said that the Town needs to follow State regulations and then the Federal government. She said there is a streamlined process so it may be worthwhile to specify that the application is filed with the building inspector and be aware there is a short deadline.

Chair Horgan asked Ms. Sofio to review the ordinance and how it needs to be revised (for future years).

Proposed addition to conditional use permits in the ordinance, January 27, 2016: "applicant shall pay, at the time the application is filed, an application fee in an amount set from time to time by the New Castle Board of Selectmen to cover internal costs. In addition, the applicant is responsible for required legal notices and may be responsible for other outside costs incurred by the Town." Chair Horgan suggested inserting this on page z-26 as letter "H" under section 5.2.3.3 and Z-58 as letter "J" under section 9.2.5.2. She suggested charging \$100 and to have this noted on the bottom of the application.

Rich Landry MOVED to add the fee for conditional use permits in the ordinance; this was SECONDED by Lorn Buxton and APPROVED unanimously.

5. New Business

- a. Hand out Tides to Storms report and map of Lavenger Creek – Chair Horgan noted that a presentation by RPC will be provided at the February Planning Board meeting.
- b. Joint meeting for the Planning Board and Conservation Commission will be held on Wednesday, March 16 at 7:00 pm in the Macomber Room. This meeting will provide a brief overview of Tides to Storms report with an emphasis on Lavenger Creek.
- c. Upcoming information sessions to the public on sea level rise, storm surges, buffer enhancement etc. for New Castle are scheduled as follow:

Wednesday March 16, 7 pm Macomber Room
Sunday, April 3, 4 pm Macomber Room
Tuesday April 12, 7 pm Macomber Room
Monday, May 2, 4 pm Portsmouth Yacht Club

Chair Horgan announced that the Planning Board packets now need to be picked up at Town Hall and will no longer be hand delivered by the Police Department.

The next meeting of the New Castle Planning Board will meet on February 24th 2016.

6. Correspondence

Chair Horgan distributed an invitation from John Chagnon and Ambit Engineering for a private skate party on Sunday January 31st at Puddle Dock Pond; 7-9 pm to the members.

7. Adjourn

Chair Horgan adjourned the January 27, 2016 meeting of the New Castle Planning Board at 9:55 pm.

Respectfully submitted by,

Sue Lucius, Secretary to the Durham Planning Board