

Approved

**Planning Board Meeting
5:30 p.m. Town Hall
Wednesday, February 7, 2018**

NOTE: This is a special, additional meeting of the Planning Board for the month of February to discuss specific agenda items.

Members Present: Darcy Horgan, Rich Landry, Margaret Sofio, Geof Potter, Bill Stewart

Others Present: Rebecca Goldberg

Members Absent: Tom Hammer, Kate Murray

Chair Darcy Horgan opened the meeting at 5:41 p.m.

1. Proposed changes to the Zoning Board of Adjustment (ZBA) section of the Zoning Ordinance

Chair Horgan described a proposed change to the ZBA section of the Ordinance as put forth by the Building Inspector. Reportedly the change was originally considered at the state level but was determined to be best weighed as a municipal level decision. It specifies how ZBA decisions should be made and recorded: each Member would be required to state how and why they vote on each of the 5 criteria. If three of the five members vote no on any one criteria, the application would fail.

Reporting on her discussion with Mr. Todd Baker, Chair of the ZBA, Chair Horgan described his opposition noting that 1) the proposed vote calculation makes it easier to obtain a variance and 2) it complicates many de minimis cases.

Currently, the ZBA considers each of the five criteria first by requiring that the applicant address each of them in their presentation, and later in the the Board's discussion. They do not, however, vote on each of the criteria. Usually the findings are described in the minutes, but not in the motion itself.

Ms. Rebecca Goldberg, ZBA Member, and Ms. Margaret Sofio, Planning Board Member and also a Member of the ZBA, concurred with Mr. Baker's opinion that the proposed regulations are burdensome and inflexible. Mr. Rich Landry, who has appeared before many ZBAs, believed the proposed changes to be unnecessary.

Ms. Sofio and Mr. Landry described that some ZBAs have a municipal attorney write up the decisions. Mr. Goldberg and Ms. Sofio have served on the ZBA longer than two years and don't recall having encountered any problems with the current process.

Mr. Bill Stewart suggested that a robust write-up of the Notice of Decision, to convey information about how the ZBA viewed the arguments, the intent and rationale for the finding, and specifics

of the decision, would allow for better consistency of interpretation across those Boards and Departments that make successive decisions. The more detailed, the better. He suggested that the ZBA agree to what is reported in the Notice of Decision. Chair Horgan suggested the ZBA refer to former ZBA Chair, Ned Robinson's, Notice of Decisions for examples.

The Board discussed the process, beginning with the Building Permit denial, and identified areas for improvement. Denial letters don't always thoroughly enumerate all the needed variances. When ZBA members preview the packet, there is an opportunity to query the Building Inspector before the hearing.

Mr. Landry noted that the Duties of the Building Inspector do not include the review of applications for conformist to zoning ordinances, although the duty may be seen as implied.

ZBA and Planning Board members agreed that the ZBA will pull past Notices for example, solicit input from the Building Inspector, and discuss the concern as a Board.

Having heard from three ZBA members, Members agreed that the proposed ZBA ordinance changes are too cumbersome and unnecessary. Chair Horgan proposed revisiting the issue in a year.

Chair Horgan motioned that the Board not recommend adding the proposed changes to the ZBA section of the Zoning Ordinance. Ms. Sofio seconded. Motion carried unanimously.

2. Vote on changing the number of days in advance of a meeting for submitting materials in Sections 5.2.1 and 5.1.3.4 of the Subdivision Section of the Zoning Ordinance

Chair Horgan directed Members to read the proposed changes to the Subdivision Regulation section of the Zoning Ordinance, in Sections 5.1.3.4 and 5.2.1 to reflect the appropriate lead time for Application and Pre-application submissions. The change to a 21-day lead time frame describes the current practice.

Ms. Sofio moved to ADOPT the changes in 5.2.1 and 5.1.3.4 as follows. Mr. Stewart seconded the motion. Motion carried, unanimously.

5.1.3 Design Review

*5.1.3.4 Those wishing to engage in pre-application design review shall submit a "Request for Pre-application Review" (Attachment 1) and associated fees not less than **21 days** before a regularly scheduled meeting of the Board. The request shall include.....*

5.2 FORMAL APPLICATION

5.2.1 Application filing, Submission and Acceptance Procedures

Applications for subdivision shall be filed with the Planning Board. (See "Application Form for Subdivision of Land", Attachment 2). Additional forms are available at the Town Hall. A completed application sufficient to invoke jurisdiction of the Board shall be filed with the Board

*(or its designee) at least **21 days** prior to the next scheduled meeting of the Board. Applications determined to be incomplete shall not be accepted by the Board for jurisdiction.*

Chair Horgan pointed out that, per Section 12.4.1. of the Subdivision Regulations, the amendment process requires a Public Hearing and approval by the Planning Board only, and does not require a ballot at Town Meeting.

3. Vote on changing the description of the Flood Insurance Rate Map in section 6.2.4.17 of the Subdivision Section of the Zoning Ordinance

Chair Horgan directed Members to read the proposed change to the Section 6.2.4.17 that clarifies the prevailing Flood Insurance Rate Map for floodplain reference.

Mr. Stewart questioned the definition of “accepted” relative to the Flood Insurance Rate Maps. Chair Horgan explained that FEMA’s process for creation of the flood maps includes the action of “acceptance” of the maps.

Mr. Landry moved to ADOPT the changes to Section 6.2.4.17 of the Subdivision Regulations as proposed, as follows. Ms. Sofio seconded. Motion carried unanimously.

SECTION 6 – PLAN REQUIREMENTS

6.2.4 REQUIRED INFORMATION

*6.2.4.17 All floodplain information, including contours of the 100 year flood elevation, based upon the **most recently amended and accepted** Flood Insurance Rate Map for New Castle, as prepared by the Federal Emergency Management Agency.*

4. Amending the Personal Wireless Services Overlay District

Ms. Sofio described the impetus for amending the Personal Wireless Overlay District section of the Ordinance. In response to municipal practices that were stalling co-location of wireless equipment, the FCC stepped in with an expedited process. The deadlines are tight. The “authority” has 15 days to review an application for completeness and to notify the applicant if there is any deficiency. A decision must be rendered within 45 days of submission of an application. The Ordinance amendment needs to define the Building Inspector as the authority. Rather than include all of the FCC details in the Ordinance, Ms. Sofio will prepare a folder with the necessary details for the Building Inspector’s reference if and when an issue arises.

Members clarified that there is currently only one wireless array in the Town, located in the church steeple. Ms. Sofio did not believe that a wireless service, under the auspices of co-location, would be allowed to locate equipment on the exterior of the church and steeple. Upon review of the background materials, Ms. Sofio suggested that no changes to the remainder of the Personal Wireless Service Facility Overlay District Ordinance are necessary.

The Board agreed that before next meeting, Chair Horgan, Ms. Sofio, and the Secretary to the Select Board, Pam Cullen, work on how the addition will affect the numbering of the Ordinance. Ms. Sofio will identify the definition for co-location.

5. Amending the performance security process in Zoning Ordinance

Mr. Landry described proposed changes to Section 9.2.5.2.i to clarify the process for performance security submission as well as new language that describes conditions for the release of such (changes in bold):

*Where required by the Planning Board, the applicant shall submit **to the Town** performance security, **in a form and amount satisfactory to Town** to ensure that all construction and any required restoration **and/or** mitigation per section 9.2.5.5.d or 9.2.5.2.h, is carried out in accordance with **the** approved design **plans and** stated conditions. The security shall be submitted prior to the issuance of any permit authorizing construction.*

In order for security to be released the applicant shall submit to the board a request for the release of security in writing along with evidence that all work has been completed in accordance with the approved plans and stated conditions. The board shall review the submitted materials and vote to release the security. At the time of initial approval the board shall specify the documentation which shall be required in order to release the security to the applicant.

If the board is not satisfied that all work is complete and complies with the approved plans the security shall continue to be held. The board shall specify a time in which the work shall be completed to cure the defects in the work and resubmit a request for the release. If after the second request the board is still not satisfied the work is complete, the board shall have the discretion to use the security to cause the work to be completed or vote to extend the period to cure the defect.

Mr. Stewart asked, and Mr. Landry affirmed, that the Town has the authority to cause site work to be completed.

Members agreed that the authority to release the security should lie with the Planning Board.

Mr. Landry suggested that the Town's attorney review and clean up the proposed amendment, including whether it should include a stipulation that the amount of security be reasonable. Mr. Landry will relook at the language then send it to Chair Horgan for review by the Town accountant and Town attorney.

Additionally, changes to the Building Permit designed to strengthen compliance to the Ordinance, were reviewed and endorsed by the Building Inspector (changes in bold):

*I hereby certify that I am familiar with all pertinent codes relating to the above specified work, and that all work shall be performed in compliance with these codes, also that I am familiar with the Town of New Castle Zoning Ordinance, Codes and Regulations. **I further certify that I understand the issuance of a building permit does not relieve the applicant/owner of responsibility to fully comply with all applicable to ordinances, codes and regulations, and if a violation is discovered at any time the owner may be required to obtain appropriate relief or take corrective action.***

6. Discuss adding a minimum size requirement for a dwelling unit to the Zoning Ordinance

At the suggestion of Mr. Andy Schulte, and over concern for potential condominiums, the Board discussed revising Table 1 on page z-19 of the Ordinance to include a minimum dwelling unit size.

Of specific concern to Mr. Schulte is the possibility that the Great Island Inn may convert to condominiums. Using that example, where unit sizes run to 456 sf, a minimum dwelling unit size of 500 sf would preclude the Inn's conversion to condominiums. However, because the Ordinance includes a minimum size of 300 sf for an Accessory Dwelling Unit (ADU), there is a seeming contradiction.

Mr. Landry believed that the Inn would be precluded based on the existing requirement of 20,000 sf per dwelling unit: condominiumized, it would be six dwelling units instead of a six-room inn and thus require 120,000 sf of land. In order to become condominiums, it would require Planning Board approval per the Subdivision Regulations. Chair Horgan also noted that the state law prevents the Board from interfering with any sort of change in ownership, E.g. condominium. Mr. Landry thought that this is true only if a property meets all the requirements of the Zoning Ordinance. In addition to the lot size restrictions, the inn does not have sufficient parking for six dwelling units.

Members reviewed the existing condominium regulations in Section 5.4 of the Ordinance. Mr. Stewart suggested the Condominium Ordinance be amended to add a minimum size for a condominium.

Citing section 6.1.2 of the Ordinance, Mr. Stewart noted Section 6.1.2, Hotel and Commercial Use Restrictions, of the Ordinance, that "a hotel room...of less than 500 sf shall be considered ¼ of a dwelling unit." While 6.1.2 only applies to the Planned Development District and wouldn't apply in other locations, it is an interesting way to consider the conversion of guest rooms to dwelling units.

The Board agreed that more time is necessary for consideration of the risks and benefits of establishing a minimum dwelling size for condominiums and did not see the need for immediate action.

7. Discuss eliminating Ground Floor Area on Table 1, page z-19, of the Ordinance

Chair Horgan asked about the meaning of "Minimum Ground Floor" and its application in the case of a 2-family, 2-story dwelling; members believed that the requirement would be for 1000 sf on the ground floor level. Similarly, a 2-family, 1-story dwelling would require 1440 sf on the ground floor level. Chair Horgan will pass this on as guidance to the Building Inspector.

8. Lavenger's Creek Dock

The Town received notice from NH DES of approval for a dock on Lavenger's Creek at 95 Main Mast Circle, including a 4' X 30' pier, 4' X 10' access ramp, 3' X 15' aluminum ramp leading to

an 8' X 10' float with an overall structure length of 60'. The dock will sit four feet above the marsh. The ruling emphasized that the decision was due to Lavenger's Creek not being designated a prime wetland by the Town. Of the potential issues, the Board noted that jet skis could be introduced into Lavenger Creek, and they are dirty and not environmentally friendly. Mr. Stewart described that much of Lavenger's Creek (but possibly not the approved dock location) is privately owned by two lots that front Wentworth Road. The approval came despite the fact that Town's Conservation Commission did not recommend approval and the Select Board's intervention stating that it was detrimental to the Town, not compliant with the Conservation Plan that was adopted for that area, and an adverse precedent. The NH DES wrote a 3-page decision.

Other creek abutters are also interested in building docks. The creek has diminished to about only 3' in width, in part due to loss of vegetation on its steep bank and causing erosion into the creek bed. A significant amount of debris is washed into the creek which will now be hung up on the dock's pilings.

Mr. Stewart indicated that the Town is an aggrieved party and will be responding within the 30 day appeal period with arguments including the impact on wildlife, kayak navigation, and concerns about water quality and erosion. The Conservation Commission is writing a letter.

Chair Horgan will ask the Town attorney about possible remedies to the concern over jet skis.

8. Adjourn

Ms. Sofio motioned to adjourn the meeting, Mr. Landry seconded and the motion was unanimously approved.

Meeting adjourned at 8:00 p.m.

Respectfully Submitted,

Anne Miller, Secretary