

1 **New Castle Planning and Zoning Commission Meeting**
2 **Wednesday, August 12, 2015, 7:00 p.m.**

3
4 **Call to Order**

5 Commission Chair Apostolik called the meeting to order at 7:00p.m.
6

7 **Roll Call**

8 Present Commissioner Apostolik
9 Commissioner Borgard
10 Commissioner Stuckey
11 Commissioner Riddile
12 Commissioner Slack
13 Commissioner Urnise

14
15 Absent Commissioner Taylor
16

17 Also present at the meeting were Assistant Town Attorney Haley Carmer, Town
18 Planner Tim Cain and Deputy Town Clerk Mindy Andis.
19

20 **Meeting Notice**

21 Deputy Town Clerk Mindy Andis verified that her office gave notice of the meeting
22 in accordance with Resolution TC-2015-1.
23

24 **Conflicts of Interest**

25 There were no conflicts of interest.
26

27 **Citizen Comments on Items NOT on the Agenda**

28 There were no citizen comments.
29

30 **Public Hearing**

31 Commission Chair Apostolik opened the public hearing at 7:01p.m.

32 **To recommend approval of an amendment to portions of Chapters 17.20,**
33 **17.36 and 15.44 of the Town of New Castle Municipal Code concerning the**
34 **certificate of approval process in the C-1 zone district.**
35 **Resolution PZ 2015-1**
36

37 Planner Cain explained that any structure in the C-1 and R-1 zone district would
38 need to get a certificate of approval to do minor changes to the exterior of the
39 structure that would not need a building permit, such as painting. The proposed
40 amendment would go through an approval process for minor exterior changes to
41 the structure would be reviewed by the planner, who would have 7 days to make a
42 decision whether or not it's appropriate.
43

44 Planner Cain stated it is the desire of Historic Preservation Commission to be
45 involved in the decision making when a designated property wants to make minor
46 exterior changes to the structure.

1
2 Attorney Carmer explained the New Castle Municipal Code contains arguably
3 duplicative provisions regarding review and approval of alterations to designated
4 historic structures within the Town's C-1 and R-1 Districts that do not require a
5 building permit. Specifically, Sections 17.20.170 and 17.36.110(A)(3) of the code
6 allow the Town Planner to administratively approve such requests, including color
7 alteration, without consulting the Historic Preservation Commission ("HPC"), the
8 entity responsible for designating historic sites, landmarks, and districts
9 ("Designated Property or Properties") within the Town. Additionally, Section
10 15.44.300 of the Code requires anyone desiring to alter the exterior appearance of
11 a Designated Property to receive written approval from HPC before proceeding.
12 These provisions create confusion and uncertainty as to which entity—the town
13 planner or HPC—has the ultimate authority to grant a certificate of compliance.
14

15 HPC recommended vesting final approval authority with the town planner and
16 requiring the planner to consult with HPC before making his or her decision on an
17 application for certificate of compliance. After further consideration, HPC felt that
18 the cleanest, most efficient option was to exempt Designated Properties from the
19 zoning requirements and give HPC the final say when it comes to such properties.
20 In order to reconcile the overlapping provisions identified above, the proposed
21 amending Sections 17.20.170 and 17.36.110 of the Code to provide that the HPC
22 has the ultimate authority to grant certificates of compliance with respect to
23 Designated Properties. For those properties located within the C-1 or R-1 districts
24 that are not Designated Properties, the town planner will retain the power to grant
25 certificates of compliance.
26

27 Under the Code as currently written, the town planner has the ultimate approval
28 power with respect to alterations to properties, including Designated Properties, in
29 the C-1 and R-1 Districts that do not require a building permit. The benefit of this
30 structure is that residents only have to wait seven days for a decision on their
31 application. If HPC becomes the deciding agency instead of the town planner,
32 applicants will be at the mercy of HPC's meeting schedule for decisions on their
33 applications. For example, if an applicant submits an application to HPC two days
34 after an HPC meeting, they will have to wait another month for a decision.
35 However, vesting HPC with certificate of approval authority over Designated
36 Properties (1) relieves the town planner of the proposed obligation to consult with
37 HPC; (2) simplifies the approval procedure; and (3) ensures that the entity that
38 created the Designated Properties maintains some control and oversight over the
39 historical characteristics of those properties.
40

41 Attorney Carmer said the Planning & Zoning Commission had several options
42 regarding the text amendment proposed in Resolution 2015-1:
43

- 44 1. Find that revision of the Code is unnecessary and recommend denial of the
45 amendments;
- 46
- 47 2. Find that revision of the Code is necessary and recommend approval of the

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1 amendments as proposed; or
2

3 3. Find that revision of the Code is necessary, but recommend that the Town
4 planner be vested with the final authority over certificates of approval for
5 Designated Properties; and

6 a. Decide whether or not to recommend that the Town planner consult with HPC
7 before making a decision on an application for certificate of compliance, and
8

9 b. Direct the Town Attorney to come back to the Commission with proposed
10 changes or
11

12 c. Direct the Town Attorney to make the changes recommended by the
13 Commission and present its recommended text amendments to Town Council.
14

15 Commission Chair Apostolik closed the public hearing at 7:16pm with no comments
16 from the public.
17

18 **Motion: Commissioner Riddile made a motion to approve Resolutions PZ**
19 **2015-1. Commissioner Slack seconded the motion and passed it**
20 **unanimously.**
21

22 **Items for Next Planning and Zoning Agenda**

23 Planner Cain stated there would be a land use application coming before the
24 commission on September 9, 2015.
25

26 **Commission Comments/Reports**

27 None reported
28

29 **Staff Reports**

30 Planner Cain reported that building permits have increased. There are currently 18 new
31 dwelling units. Last year there was a total of 16.
32

33 The senior housing project was not awarded the tax credit program, however the
34 organization (Community Recourse Housing Development Corp) will continue to move
35 forward with the project. The organization was invested in the project, and they plan on
36 completing the public process even though they didn't get the funding this year. Of the 31
37 projects that applied for the tax credit program, only 14 were funded.
38

39
40
41 Warrior paid for the permit for the clubhouse and should be breaking ground within the next
42 few weeks.
43

44 The town is working with Colorado Department of Transportation to devolve portions of
45 Main Street. This will provide the town the opportunity to create angled parking downtown.
46

Review Minutes from Previous Meeting

1 **Motion: Commissioner Apostolik made a motion to approve the minutes**
2 **from March 25, 2015 as amended. Commissioner Borgard seconded the**
3 **motion and passed unanimously.**

4
5 The meeting adjourned at 7:45p.m.

6
7 Respectfully Submitted,





Planning and Zoning Commission Chair
Chuck Apostolik

15 

Deputy Town Clerk Mindy Andis



Town of New Castle **Planning and Code**
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Exhibit 1

8/12/15 to
Planning & Zoning Minutes

Memo

To: Chairman Chuck Apolstolik & Members of Planning & Zoning Commission
From: Tim Cain
Date: August 6, 2015
RE: Text Amendment – Chapters 15.44, 17.36, 17.40 & 17.44

Background and Discussion:

After consulting with Town Attorney, David McConaughy, there seems to be procedural conflicts and other inconsistencies in the Town codes relative to Historic Preservation and Rehabilitation.

In response, the Town Council has asked for Historic Preservation Commission input about whether it is advisable to change the Municipal Code sections by way of a text amendment relative to altering structures in the C-1 Zone District. The HPC has discussed the issues found below and have recommended that changes be made to the code. The next step is for P&Z to review the attached Resolution recommending said changes.

Sections 15.44.300, 310 and 320 set forth procedures for review and approval of building permits and other proposed work either for designated structures "or districts" by the HPC, including alterations of color only when no building permit is required. Those sections contemplate HPC review of such applications based on their regular meeting schedule. HPC declined to name the C-1 Zone District as a Historic District. This is important because not every property owner in this district is agreeable to having their property deemed "Historic" meaning the zoning regulations would require every one seek permission to alter the exterior of their property including getting permission to paint their home or business. If HPC were to designate C-1 a Historic District, every single property owner would have to agree to its designation and that does not appear feasible.

Chapter 17.36 sets forth the zoning regulations for the C-1 Zone district, which includes all structures on the north and south side of Main St. from 8th to 1st St. on the north side and Mattivi Ave. on the south side.

Section 17.36.110 (A)(3) has a procedure for approval of work not requiring a building permit, which would include color changes. That section provides review and approval by the Town Planner within 7 (seven) working days. Appeals go to the Board of Zoning Adjustment (BOZA). BOZA consists of members from the Town Council. This can cause procedural conflict with HPC duties and responsibilities in Chapter 15.44.

Chapter 17.40 is titled BUILDING DESIGN STANDARDS IN C-1 COMMERCIAL DISTRICT and section 17.40.110 discusses Building materials and colors. This section may require additional procedural language or other changes such that it is consistent with other code sections previously mentioned.

Chapter 17.44 is titled HISTORIC PRESERVATION IN C-1 COMMERCIAL DISTRICT. And it, too,

could be subject to possible text amendment to, once again, provide procedural consistency relative to other code sections.

Recommendation:

I believe it is necessary to provide text amendments to relevant sections of the code so we can have clear and concise language that is consistent and easy for the general public to understand.

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Since 1975
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Exhibit 2
to
8/12/15 Planning & Zoning Minutes

Haley M. Carmer, Esq.
hcarmer@garfieldhecht.com

August 6, 2015

MEMORANDUM

TO: New Castle Planning and Zoning Commission
FROM: Haley M. Carmer, Assistant Town Attorney
RE: Amendment to Town Code Chapters 17.20, 17.36, and 15.44

It has come to the town staff's attention that the New Castle Municipal Code contains arguably duplicative provisions regarding review and approval of alterations to designated historic structures within the Town's C-1 and R-1 Districts that do not require a building permit. Specifically, Sections 17.20.170 and 17.36.110(A)(3) of the Code allow the Town Planner to administratively approve such requests, including color alteration, without consulting the Historic Preservation Commission ("HPC"), the entity responsible for designating historic sites, landmarks, and districts ("Designated Property or Properties") within the Town. Additionally, Section 15.44.300 of the Code requires anyone desiring to alter the exterior appearance of a Designated Property to receive written approval from HPC before proceeding. These provisions create confusion and uncertainty as to which entity—the town planner or HPC—has the ultimate authority to grant a certificate of compliance. These sections could also be read to require certificates of compliance with two sets of standards that are essentially the same. The former scenario is troublesome from a legal standpoint, and both scenarios are undesirable from a practical standpoint.

This issue was brought to HPC's attention at its July meeting. HPC recommended vesting final approval authority with the town planner and requiring the planner to consult with HPC before making his or her decision on an application for certificate of compliance. After further consideration, however, it is our opinion that the cleanest, most efficient option is to exempt Designated Properties from the zoning requirements and give HPC the final say when it comes to such properties. In order to reconcile the overlapping provisions identified above, the Town Attorney proposes amending Sections 17.20.170 and 17.36.110 of the Code to provide that the HPC has the ultimate authority to grant certificates of compliance with respect to Designated Properties. For those properties located within the C-1 or R-1 districts that are not Designated Properties, the town planner will retain the power to grant certificates of compliance.

Under the Code as currently written, it is the opinion of the Town Attorney that the Town planner has the ultimate approval power with respect to alterations to properties, including Designated Properties, in the C-1 and R-1 Districts that do not require a building permit. The benefit of this structure is that residents only have to wait seven days for a decision on their application. If HPC becomes the deciding agency instead of the Town planner, applicants will be at the mercy of HPC's meeting schedule for decisions on their applications. For example, if an applicant submits her application to HPC two days after an HPC meeting, she will have to wait another month for a decision. However, vesting HPC with certificate of approval authority over Designated Properties (1) relieves the town planner of the proposed obligation to consult with HPC; (2) simplifies the approval procedure; and (3) ensures that the entity that created the Designated Properties maintains some control and oversight over the historical characteristics of those properties.

The Planning & Zoning Commission has several options regarding the text amendment proposed in Resolution 2015-1:

1. Find that revision of the Code is unnecessary and recommend denial of the amendments;
2. Find that revision of the Code is necessary and recommend approval of the amendments as proposed; or
3. Find that revision of the Code is necessary, but recommend that the Town planner be vested with the final authority over certificates of approval for Designated Properties; and
 - a. Decide whether or not to recommend that the Town planner consult with HPC before making a decision on an application for certificate of compliance, and
 - b. Direct the Town Attorney to come back to the Commission with proposed changes or
 - c. Direct the Town Attorney to make the changes recommended by the Commission and present its recommended text amendments to Town Council.

I look forward to discussing these issues with the Commission at its August 12th meeting.