



TOWN OF DURHAM
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Town Planner's Recommendation
Wednesday, January 14, 2015

XII. **50 Newmarket Road – Mill Pond Center Property.** Design review application for a 3-lot subdivision. Seacoast Repertory Theatre, property owner; Matt Faginger-Auer for Doucet Survey, Surveyor. Tax Map 6, Lot 9-8. Residence B Zoning District.

- I recommend closing the design review if the project looks workable or continuing it if there remain significant concerns.

** No significant new issues have arisen so these are the substantially the same comments that I made in my December 10, 2014 recommendations.*

Please note the following:

Process

- 1) Since this is not a conservation subdivision the submission requirements for design review should not apply. As a three-lot subdivision it need not be developed as a conservation subdivision.
- 2) This was presented earlier as a conceptual application by Jack Farrell. I believe that Mr. Farrell is no longer involved with the project.
- 3) The plat is in color and uses an aerial photo. Doucet Survey said this is not their standard procedure but they thought using the aerial would be useful for this site.

Plans

- 4) Contour elevations are not shown but will be shown on final plans
- 5) The wetland lines are a little confusing and need to be clarified
- 6) This is a design review though the plans say conceptual.

Lots

- 7) Lot 2 is steep and will need to be carefully designed.
- 8) Proposed driveway and house locations are shown. As part of an approval it may make sense to stipulate the driveway locations but not for the houses, other than to provide for any desired buffers or special setbacks. The houses should probably be located close to the private road and away from Newmarket Road to minimize visibility.

- 9) The electric lines for the existing house will probably need to be relocated to the private road. It probably makes sense to keep them above ground, in which case a waiver would be needed.
- 10) Grading for driveway for lot 2 would be helpful to show
- 11) Lot 1 will be subject to HDC review if changes are proposed within the district
- 12) Is that a cemetery at front of lot 1?
- 13) Buffers. Additional buffers along the existing tree line should be established along Newmarket Road and at the rear of the new lots.
- 14) The applicant has not taken test pits yet so they do not know how the soils are and how much ledge there is.
- 15) Three lots are proposed: a 40,000 square foot lot fronting on Newmarket Road, a 60,000 square foot lot with frontage on the existing driveway (as a private road), and the residual land which would include the existing house and the conservation land.
- 16) The parcel is zoned Residence B. The minimum lot size for a single family residence that is not part of a conservation subdivision is 40,000 square feet. The minimum frontage is 150 feet.
- 17) Under the Wetland Conservation Overlay District (Section 175-64) no part of any surface water, wetland, very poorly drained, poorly drained, or somewhat poorly drained land may count toward the minimum lot size. If any of these exist the lot size, notably of lot 1, would need to be expanded accordingly.

Conservation Easement

- 18) The conservation area was conveyed from the Mill Pond Center , Inc. to the Rockingham Land Trust, which later became the Southeast Land Trust of New Hampshire (SELTNH). The deed is dated December 29, 2004.
- 19) The conservation land cannot be used to meet any density requirements under zoning.
- 20) The Town of Durham holds a secondary interest in the conservation easement.
- 21) The easement areas shown should be clarified (in terms of total square footage, purpose, etc.)
- 22) I am clarifying with the land trust that there are no problems with the subdivision under the easement.

Private Road

- 23) *** It was the sense of the TRG at its meeting on December 2 that an appropriate design for the road would be to maintain the existing pavement, which is about 12 feet wide but to add 4 feet of shoulder on each side from Newmarket Road to the second driveway access. This would provide for a 20 foot passage, including shoulders, which is required by the Fire Department. Is this acceptable to the board? The pavement seems to be in pretty good

shape. A waiver would be needed from the Road Regulations which stipulate a 20 foot wide paved road. Given that this is an existing driveway, a private road, and serving only 3 lots, I think a waiver is appropriate. It does not seem that any realignment of the road is in order.

- 24) The Town's Road Construction Regulations apply to private streets as well as future Town roads. These are geared toward new Town roads so much of the regulations will not apply. The Planning Board can waive requirements as it sees fit as these regulations are akin to the Subdivision Regulations.
- 25) The zoning ordinance requires frontage on a street. "Street" includes a private street, which this would be. Tom Johnson has confirmed that frontage on this private street will meet the zoning requirement.
- 26) If the Planning Board approves the subdivision, the applicant will need to record an indemnification form and obtain approval from the Town Council for issuance of new building permits as follows:

RSA 674:41 Erection of Buildings on Streets; Appeals. –

I. ... no building shall be erected on any lot within any part of the municipality nor shall a building permit be issued for the erection of a building unless the street giving access to the lot upon which such building is proposed to be placed: ...

(d) Is a private road, provided that:

(1) The local governing body, after review and comment by the planning board, has voted to authorize the issuance of building permits for the erection of buildings on said private road or portion thereof; and

(2) The municipality neither assumes responsibility for maintenance of said private roads nor liability for any damages resulting from the use thereof; and

(3) Prior to the issuance of a building permit, the applicant shall produce evidence that notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds for the lot for which the building permit is sought; or

- 27) Access easements and provisions for maintenance of the private road would be needed.
- 28) A street name would probably be needed with good signage of the addresses at Route 108.
- 29) Arrangements for the maintenance of shared road will be needed
- 30) Town Council will need to authorize building permits on the private road
- 31) An indemnification will need to be recorded.
- 32) An NHDOT permit will be needed. It is likely that the top of the driveway, where it meets Newmarket Road will need to be leveled to provide a platform for vehicles waiting to turn. The applicant should coordinate with NHDOT as Newmarket Road will likely be raised as part of the bike lane project.
- 33) Seacoast Repertory Theater, which owns the site, plans to make the improvements to the road. This is a better approach than requiring one or more lot buyers to make the improvements later.

Uses

- 34) Variances and prior approvals. The applicant should abandon all or most variances and prior approvals that have been given, so that this site permits only single family uses. This is appropriate due to the limited capacity of the private road. Should accessory dwelling units be allowed on the two new lots? Should any special allowance be sought for use of the barn on the residual lot? Pertinent variances are included in the packet.

Other Issues

- 35) Mr. Farrell said earlier that there would not be a homeowner's association.
- 36) Chief Kurz and other members of the TRG expressed concern about the houses on any of these lots becoming student housing. If any house did then, under zoning, it could house only three unrelated students. This could be especially problematic on a narrow private street like this. The Planning Board has a fair amount of discretion in reviewing this subdivision due to the limited nature of the existing street. The TRG discussed prospectively including a deed restriction that the two new houses be at least 2,000 square feet in size to encourage purchase by a family. The applicant might be receptive to this.
- 37) The Town does not pick up garbage along the private road. The homeowners will need to bring their garbage to Newmarket Road. Is any sort of shed/structure appropriate?
- 38) Any structures on the lot (including a driveway and parking) closest to Route 108 will likely need to be reviewed by the HDC. The HDC's purview extends 250 feet from the centerline of the road.
- 39) The 250 foot line for the historic district will need to be shown on the formal application.
- 40) It would be helpful for the applicant to meet with the Conservation Commission later to see if they have any concerns.