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Town Planner's Recommendation
Wednesday, February 11, 2015

XIV. **Public Hearing - Eldercare Facility – Durham Business Park**. Design Review (preliminary application) for an eldercare facility with a total of 116 dwelling units situated in three large buildings and 14 cottage and duplex units. Grant Development, LLC, c/o Eric Chinburg, property owner and developer. Mike Sievert, MJS Engineering, Engineer. Tax Map 11-27-1 through 11-27-7. Durham Business Park Zoning District.

- I recommend discussion and continuation of the design review and public hearing to March 11.

Please note the following:

Zoning

Lifecare facility. The Durham Business Park Zone allows an eldercare facility. The applicant proposes to have a “lifecare facility” as defined under eldercare, as follows:

ELDERCARE FACILITY – Housing principally used, designed, or adapted for use by elderly citizens, fifty-five (55) years of age and older that are not capable of living independently and that that require assistance in activities of daily living (ADL’s), and complying with the design requirements of the Architectural Barrier Free Design Code for the State of New Hampshire. Residents of an eldercare facility shall receive a package of services to meet their needs. An “eldercare facility” may be contained in a single building or group of buildings and may include assisted living facilities or nursing home facilities. A “life care community” or other retirement community that provides a continuum of care including both independent living units and units for residents that require assistance, shall be considered to be an eldercare facility.

Determination of use. According to Laura Spector, Town Attorney, *the Planning Board will make the determination whether the proposed project complies with this definition*. It would be beneficial for the applicant to provide all information related to this question as soon as possible in order that the board can make this determination early, at the design review stage. The applicant proposes offering various services in the letter of intent.

Determination of Density. There is a shortcoming in the Zoning Dimensional Table. Under “Minimum Lot Area Per Dwelling Unit” it says “NA” (not applicable). It is understandable that the crafters of the ordinance thought NA made sense because none of the standard residential uses are permitted in the Durham Business Park. However, an eldercare facility is permitted and this use can be set up with dwelling units. We had a meeting with Todd Selig, Tom Johnson, Mary Ellen Humphrey, Laura Spector, and me. After reviewing some zoning history and the earlier dimensional tables including some proposed under the original

zoning amendment that created the Durham Business Park zone, *we all agreed that 4,200 square feet made sense in this slot.*

The current dimensional table and the table prior to several zoning amendments are included. See the older table. In the zoning ordinance, the OR, MUDOR, ORLI, and DBP zones are considered similar types of zones, all designated as “Research/Industry Zones.” Each of the other three zones has a number for minimum lot area per dwelling unit. It seems the most reasonable way to extrapolate what the number for the DBP should be is derived from examining those zones and comparing them to the DBP.

Note that in the original table the OR and ORLI zones had 4,200 square feet and the MUDOR zone has 1,200 square feet. We agreed that the 4,200 square feet number made more sense than the 1,200 square feet number. For one thing, the Durham Business Park could probably not be developed anywhere near the 4,200 density, let alone the 1,200 density.

The Town Council increased the minimum lot area per dwelling unit significantly for the MUDOR and ORLI districts in 2014. All of the density figures were increased to 40,000 and 150,000 for MUDOR and ORLI, respectively. Had there been a 4,200 figure included for DBP from the outset, arguably the Town Council would not have increased that figure because the amendment was oriented toward multifamily housing, which was allowed by conditional use in the MUDOR and ORLI districts at that time, but not in the OR or DBP districts. Plus, this is speculative and the Town Attorney did not think it appropriate to determine this number based on such speculation.

*The Town Attorney said that *the Planning Board will need to make this determination* (not Tom Johnson, Zoning Administrator), whether or not it agrees with our recommendation of 4,200 square feet. I would recommend that the board shoot to make this determination at the following meeting. I will provide more background information for that meeting.

Process

- 1) The application was submitted to the Planning Board on the January 14 agenda but there was no time to discuss it.
- 2) This application is for design review. Given the size of this project I would recommend the board keep this application at the design review stage until the design is fairly well fleshed out and appears to be workable.
- 3) The applicant presented the project to the TRG on January 6.
- 4) Site walk. A site walk should be scheduled when the snow conditions permit.

Basic project

- 5) Site. The property is 28.4 acres. It is currently undeveloped. It is subdivided into 7 commercial lots. The lots will be combined into one lot. Three large buildings with 36 units, 36 units, and 30 units plus services, respectively, along with 14 detached units, for a total of 116 dwelling units, are proposed.

Design Guidelines

- 6) Design Guidelines. When the Town conveyed the property to a private owner years ago, the Town executed a private covenant with the owner of the property for Design

Guidelines. This was enclosed in the last packet and is posted on the web. The review panel (or “design committee”) will review the architecture and site design for compliance. This is a private review, independent from the Planning Board’s site plan review, but the applicant must comply with the guidelines, or the Town would enforce the guidelines in court, again, independently from the board’s review. This review should be conducted on parallel with the Planning Board’s review. The Planning Board is not bound by these guidelines but clearly, it would not make sense for the board to approve a project that the review panel did not sign off on.

- 7) Review Panel. The committee is composed of the Town Administrator, Town Planner, Kitty Marple (Town Council representative), and Peter Wolfe (Planning Board representative). We will arrange for a first meeting soon. The meetings will be open to the public.

Architecture

- 8) Design Guidelines. Various standards are contained in the Design Guidelines, related to relationship with the surroundings, a theme, traditional building materials, and windows.
- 9) Duplex garages. Garages should be as unobtrusive as possible, including turning them sideways or recessing them well beyond the face of the building.
- 10) Town houses. It would be beneficial to include some townhouses to the north of the large buildings to add variety and help step down the transition from large buildings to cottages, but this may not be practical due to limited developable areas.

General Site Design

- 11) Overall design. I think the overall design is quite good for the initial iteration. It makes sense that there be three larger buildings in the middle of the site, arranged in a “C” and facing toward the entry road. The expanded cul de sac is attractive. Using smaller cottages along the entry road makes sense. The underground parking is very welcome.
- 12) Duplex H. It would probably be good to eliminate the duplex H as the presence of a house there would discourage residents from walking along this path, the gravel drive will disrupt the landscape, and there may be concerns about fire access.
- 13) Street trees. An avenue of trees should be planted along both sides of the entry road. It should be denser than what is shown. How formal/informal should the plan be?
- 14) Housing layout. A great principal of design is “variety within unity.” The cottages should be arranged and designed so that there is some individuality for each but also some overall pattern. The arrangement seems a little random but there are constraints due to the wetland buffers.
- 15) Sidewalk planting strip. There should be a planting strip between the sidewalk and the driveway around the cul de sac and along the entire road. It should be quite wide along the road section.

Views toward the project

- 16) From Route 108. The Design Guidelines state that buildings shall be sited to preserve significant views from Route 4 and the Oyster River. Note that the views from the river are very open to the site. It would be important to have a rendering of the final views from the river from several vantage points. Likely, significant landscaping will be needed to help buffer the view of the buildings. The proposal is for lower, 2-1/2 story buildings, which should be less obtrusive.
- 17) From the Oyster River. The Design Guidelines state that buildings shall be sited to preserve significant views from Route 4 and the Oyster River. Should there be a larger setback from Route 4? It would be important to have a rendering of the final views from the river from several vantage points. Additional landscaping will probably be needed along Route 4.

Site Issues

- 18) Site alteration. The Design Guidelines state that buildings shall be sited to preserve significant vegetation and existing land forms, that design shall minimize changes in natural drainage patterns and the natural slope of the land, and that significant, healthy vegetation be retained wherever possible.
- 19) Parking. The Design Guidelines state that parking areas shall be landscaped to reduce visual impact and shall not be located on the riverfront side of buildings unless thoroughly screened with vegetation. Much of the parking will be underground which is beneficial.
- 20) Overlay Districts. The Shoreland Protection, Wetland Protection, and Flood Hazard Overlay Districts apply to the site.
- 21) Density. We will see in the course of the site review if the proposed *116 dwelling units* is appropriate for the site and under zoning. Note that if the Planning Board determines that 4,200 square feet is the right number for the dimensional table, this would allow 294 dwelling units based on 28.4 gross acres. The zoning ordinance then provides a density bonus of x3 for 1-bedroom and studio units and x2 for 2 or more bedrooms. At any rate, the applicant's proposal for 116 dwelling units is well below these figures and it is highly unlikely that this site and numerous constraints would allow for such high numbers of dwelling units.

Traffic and Circulation

- 22) Route 4 access. NHDOT has stipulate a maximum of 60 trips are peak hours. A traffic analysis acceptable to NHDOT will be needed.
- 23) Cul de sac. The cul de sac at the end is shown as one way. This probably makes more sense that a 2-way loop.

Pedestrian Connections

- 24) Old Piscataqua Road. It would be desirable to connect with Old Piscataqua Road is practical. This path might run within the Route 4 right of way or across intervening properties if easements can be obtained. There are plans for a potential sewer force main running to Piscataqua Road, along which a path could more readily be constructed, but those plans are a few years off.
- 25) Footpaths. Footpaths are shown to three destinations along the river – a patio, overlook, and boathouse. This will be a nice amenity. Two of the ends of the paths may be a little too squiggly.

- 26) Public access. It would be highly beneficial if the applicant were willing to allow public access to the footpaths and the riverfront. Mr. Chinburg said that he is receptive to this but would want to restrict hours for the public. The purchase and sales agreement contained this language but it was not included in the deed:
- 27) *Deed Real Estate Taxes: PILOT Public Access. ... The Buyer shall provide for public access to the Oyster River in perpetuity over a portion of the area to be designated as an access easement for passive recreational use (the "Access Easement") in a location to be determined in the Phase I planning and approval process; provided however that the Access Easement shall be located in restricted wetland buffer areas along the shore and not interfere with any developable building area. Each deed or other transfer document from the Buyer to any future transferee of any interests shall be subject to the Access Easement.*

Fire Issues

- 28) Arthur Grant Road. It will need to be verified that the road meets access requirements. The department stated that vegetation should not encroach within the required clearances.
- 29) Sprinklers. The large buildings will probably need to be sprinkled.
- 30) Fire Hydrants. Locations will be examined in the course of the project review.
- 31) Cottages. The cottages on the point (Area H) may not meet NFPA requirements. One option is providing sprinklers.
- 32) Cul de sac. Turning radii will need to be confirmed for fire trucks.
- 33) Building requirements. Depending on exact use, the buildings will need to meet specific code requirements for elderly/assisted living.
- 34) Assisted living. The Fire Department has pointed out the fiscal and services issue with assisted living. Assisted living units do generate more calls for medical assistance.

Utilities

- 35) Services. The site is served by Town water and sewer.
- 36) Underground. The Design Guidelines stipulate that all existing and proposed utilities must be buried. The applicant proposes to retain existing overhead facilities. This will need to be discussed.
- 37) Equipment. The Design Guidelines stipulate that mechanical equipment be screened from public view.
- 38) Energy Checklist. A partial checklist was submitted. This will be completed with the formal application.

Services

- 39) McGregor. The applicant met with McGregor Memorial EMS. We have a memorandum from Bill Cote, Executive Director, about the project. This was sent to the Planning Board.

Miscellaneous

- 40) Developer. Eric Chinburg, property owner and applicant says that he will be developing the project.
- 41) PILOT. There was a provision about a payment in lieu of taxes for the development in the purchase and sales agreement that did not make it into the deeds. We would like to address this as part of the project. The applicant is receptive to this.
- 42) Deed Real Estate Taxes: PILOT Public Access. *Seller will deliver to Buyer at Closing a warranty deed acceptable to the Buyer in its sole discretion. The deed will contain a restriction that if any buyer or owner of the Property or a portion of the Property is a tax exempt organization, such buyer or owner shall be obligated to make a payment in lieu of taxes (a "PILOT") equal to the amount of state, county, municipal and school district taxes that otherwise would be payable as real estate taxes, or an amount that is less than said taxes due if the Town Council deems it in the best interest of the Town of Durham.*