



**TOWN OF DURHAM**  
8 NEWMARKET RD  
DURHAM, NH 03824-2898  
603/868-8064  
[www.ci.durham.nh.us](http://www.ci.durham.nh.us)

***Town Planner's Recommendation***  
**Wednesday, April 8, 2015**

- X. ***Public Hearing - Former Mill Pond Center Property – 2-lot Subdivision***. 50  
Newmarket Road. Formal application for a 2-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 approval as shown below, if all is in order

Please note the following:

- The HDC approved the shared driveway on Wednesday with a few conditions incorporated below (and so identified).
- This is the same notice that was reviewed on March 25 except for changes that are marked below.
- Does the board want to set limits for hours for work on the shared driveway? (Standard hours: 7:00 a.m. to 6:00 p.m. Monday through Friday and 8:00 a.m. to 6:00 p.m. Saturday.)
- Revised plans are enclosed. It was pointed out that the Subdivision Regulations require a 30 foot wide right of way. The plans have been changed to show this. Note the right of way (or “easement”) is simply the width alongside the shared driveway easement. Like a Town roadway that has a 50 foot right of way beyond, a private right of way/easement has a defined width that is often wider than the travelway itself. This will facilitate maintenance should the rear lot need to maintain the shared driveway. Also, the front lot has been changed to that the rear line extends all the way across. The rear lot will no longer have any frontage alongside the shared driveway. It still meets its frontage requirement to the north, along the conservation easement land.
- Some minor changes were made to the shared driveway as shown, showing a stone wall along the front of the property that will need to be pulled back 3-4 feet to accommodate the flare in the driveway. The gravel shoulder now is tapered at the far end. No other stone walls need to be removed. Mike Lynch, Durham Tree Warden looked at the 5 trees and through it appropriate for them to be removed (some are dead or decaying).
- Waiver for road. The waiver for 20 feet of pavement of the private road is no longer needed as it has been determined that the shared driveway is not a private street.

**\*Draft\***  
**NOTICE OF DECISION**

**Project Name:** Former Mill Pond Center Subdivision  
**Project Description:** 2-lot subdivision  
**Address:** 50 Newmarket Road  
**Applicant:** Seacoast Repertory Theater  
**Surveyor:** Matt Faginger-Auer for Doucet Survey  
**Engineer:** MJS Engineering (for shared driveway)  
**Map and Lot:** Map 6, Lot 9-8  
**Zoning:** Residence B  
**Date of approval:** April 8, 2015

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This project has been approved as stated herein. "Applicant", herein, refers to the property owner, business owner, individual(s), or organization submitting this application and to his/her/its agents, successors, and assigns.

**PRECEDENT CONDITIONS**

[Office use only. Date certified: \_\_\_\_\_; As-built's received? \_\_\_\_\_; All surety returned: \_\_\_\_\_]

All of the precedent conditions below must be met by the applicant, at the expense of the applicant, prior to the plans being certified by the Planning Department. Certification of the plans is required prior to issuance of a building permit or recording of any plans. Once these precedent conditions are met and the plans are certified the approval is considered final.

\*\*\*Please note. If all of the precedent conditions are not met within 6 calendar months to the day of the board's approval - by September 25, 2015 - the board's approval will be considered to have lapsed and resubmission of the application will be required (unless an after-the-fact extension is granted by the Planning Board). ***It is the sole responsibility of the applicant (or his/her agent) to ensure that these conditions are met by this deadline.*** We urge the applicant to carefully track his/her progress in meeting the individual conditions. See RSA 674:39 on vesting.

**Plan Modifications**

Plan modifications. The plan drawings are to be modified as follows:

- 1) ~~Approval block.~~ Change the approval block on each page of drawings to read: "Final Approval by Durham Planning Board. Certified by Michael Behrendt, Town Planner  
\_\_\_\_\_  
Date \_\_\_\_\_"

*[This was done on the revised plans.]*

- 2) Road profile. Obtain approval for the slope of the new pavement at the mouth of the shared driveway from the Department of Public Works and NHDOT, if approval from the latter is required.

*[This was adjusted in the revised plans from 4% to 2%. DPW will review it.]*

- 3) ~~Shoulder taper.~~ Taper the gravel shoulder back into the pavement at the far end of the improvements to the shared driveway.

*[This was done on the revised plans.]*

- 4) ~~Driveway location.~~ Show the driveway location for the front lot on Sheet C1. Adjust the length of improvements to the shared driveway to extend 100 feet +/- beyond the driveway, as appropriate.

*[This was done on the revised plans.]*

- 5) Street name and addresses. Determine a street name for the shared driveway and addresses for the 2 lots to be approved by the Fire Department. Show the name and street addresses on the plans. (Use of a historical name is encouraged, though not required. The applicant is encouraged to check with a representative of the Historic District Commission for suggestions.)
- 6) Utilities. Show new location of above ground electrical utilities along the shared driveway/driveway to the rear lot or clarify that the existing utilities are to remain and add an appropriate note to the plan. If the latter, provide an acceptable easement for the rear lot to use the utilities.
- 7) ~~Minimum area.~~ Change the box on sheet 2: eliminate “usable area” on top line; change “Total Usable Area” to “residual lot area”

*[This was done on the revised plans.]*

### **Plan Notes**

- 8) Plan notes. Add the following notes (or equivalent) to the plan drawings:

*[All of the crossed out items below have been added to the revised plans.]*

- 9) ~~Additional information.~~ “For more information about this subdivision, or to see the complete plan set, contact the Town of Durham Planning Department, 15 Newmarket Road, Durham, NH 03824. (603) 868-8064.”
- 10) ~~Shared driveway.~~ “The shared driveway accessed off Newmarket Road/Route 108 is a private shared driveway and is not maintained by the Town of Durham, nor does the Town collect garbage along this shared driveway. It is the sole responsibility of the owners of the 2 lots included in this subdivision to maintain the shared driveway as specified in the access and maintenance documents.”
- 11) ~~Buildings on rear lot.~~ “Interested parties are encouraged to contact the Durham Building and Fire Department regarding the status of the house and barn on the rear lot.”
- 12) ~~Driveway location.~~ “The location of the driveway leading into the front lot is the approved location. The driveway shall be located as shown unless an alternative acceptable location is approved by the Department of Public Works.”

- 13) ~~Construction of improvements.~~ “The buyer of the new front lot is responsible for construction of improvements to the shared driveway. The driveway shall be satisfactorily completed prior to issuance of a certificate of occupancy for any building on the front lot. An appropriate surety shall be placed with the Town prior to issuance of a building permit.”
- 14) ~~Prior approvals.~~ State this in bold with an \*. “Several variances and site plan approvals have been granted for the rear lot. One or more of these approvals may or may not still be valid. Any party interested in continuing these uses is urged to consult with the Town of Durham Zoning Administrator for clarification.”
- 15) Access easement. Add additional sentences to Note 13: “The access easement allows for a potential broad range of uses on the rear lot. The terms of the easement, as approved and as recorded herein may not be changed without the express approval of the Durham Planning Board.”

*[Beth Olshansky in a letter read at the public hearing on March 25, proposed that this language be changed as follows. Does the board wish to revise this note?]*

*“The access easement allows for a potential broad range of commercial and residential uses on the rear lot, including but not limited to single family residence, elderly single family, duplex and multi-unit housing, eldercare facility, adult daycare center, childcare center, nursery school or preschool, bed and breakfast, recreational playing fields, forestry and temporary sawmill, religious facility, and governmental facility.”]*

- 16) ~~HDC purview over front lot.~~ Change note 18 to read as follows. State this in bold with an \*. “The Durham Historic District Commission (HDC) has purview over any changes to buildings, structures, stonewalls, cellar walls, fences, driveways and pavement, removal of trees with a 12” diameter, and substantial changes in topography within the Historic District (as identified on the plan). Interested parties are encouraged to coordinate with the HDC as early as possible.”

*[This was done on the revised plans.]*

### **Other Precedent Conditions**

- 17) Addressing. Develop a numbering system for the two lots to be approved by the Fire Department.
- 18) Easement. The Planning Department shall approve the final maintenance and access easement. The access easement shall allow for access to the rear lot for a potential wide range of uses. Add language that the owner of the rear lot may make any improvements to the shared driveway that are either approved by the Town as part of any approved use/development of the rear lot or are part of any Town use/development of the rear lot.

*[I added the second sentence here.]*

- 19) NHDOT permit. Obtain driveway access permit from NHDOT for the increased use and changes to the shared driveway.

- 20) Signature. Sign this notice at the bottom.
- 21) NHDES approval. Obtain NHDES approval for the subdivision.
- 22) Boundary markers. Set boundary markers for the new lot (actually physically set in place in the field) and note on plans (“marker set” or equivalent) or place an acceptable surety with the Planning Department to place them at a later time.
- ~~23) Town Council approval. Obtain approval from the Durham Town Council for issuance of new building permits on both lots, per RSA 674:41. (By virtue of its approval of this subdivision, the Planning Board recommends authorization for issuance of building permits.)~~

*[This is no longer appropriate. I checked with the Town Attorney. Because the rear lot is already developed and because the access to the front lot is via a driveway (albeit a shared driveway and easement) that is situated on the front lot, then this requirement is not appropriate.]*

- 24) Indemnification form. Submit draft indemnification form per RSA 674:41 for approval to the Planning Department (to be recorded below) for the rear/residual lot (It is not needed for the new front lot).

*[Per the Town Attorney this is needed for the rear lot only since the front lot takes access entirely along its own property.]*

- 25) Final drawings. The following complete sets of final approved drawings shall be submitted for signature (except the electronic version) by the Town, including all 5 sheets: (a) one large set of mylars; (b) one large set of black line drawings; (c) one set of 11"x17" drawings; and (d) one electronic version by pdf or CD. Each individual sheet in every set of drawings must be stamped and signed by the land surveyor, engineer, or architect responsible for the plans.

26)

**GENERAL AND SUBSEQUENT TERMS AND CONDITIONS**

All of the conditions below are attached to this approval.

- 1) Erosion and sedimentation. All erosion and sedimentation control structures alongside the road improvements shall remain in place and be maintained until vegetation is established and the ground surface is stabilized.
- 2) House location. The location of the house shown on the topographic plan is for illustrative purposes only. The house may be located anywhere within the setback lines subject to other applicable requirements, including HDC approval. However, the house may not be located in the steep part of the lot, anywhere within the 224DH, 224EH, nor 343DH soil areas.
- 3) Shared driveway improvements. The buyer of the new front lot is responsible for construction of improvements to the shared driveway. The shared driveway shall be satisfactorily completed prior to issuance of a certificate of occupancy for any building on the front lot. An appropriate surety, to ensure either completion of the improvements or

reclamation of the driveway should the improvements not be completed, shall be placed with the Planning Department prior to issuance of a building permit. The amount shall be approved by the Department of Public Works and the Town Business Manager shall approve the form of surety.

- 4) Building permit and recording. No building permits on the new lot shall be approved until there is proof of the items below having been recorded at the Registry of Deeds.
- 5) Street sign. A street sign, as approved by the Department of Public Works, bearing the name of the approved street name, above, shall be installed prior to issuance of a certificate of occupancy for the front lot.
- 6) Recording. The plat (2 pages labeled “Subdivision Plan”), this notice of decision (per RSA 676:3 III), all easements/deeds, and the indemnification form (above) must be recorded at the Strafford County Registry of Deeds within two (2) calendar months to the date the plat is certified (e.g. if certified September 9th it must be recorded by November 9th). See RSA 478:1-a regarding plat requirements. Failure to comply with this requirement herein shall render the subdivision null and void.
- 7) Waivers. The Planning Board granted a waiver to allow for above ground utilities.

*[The waiver for a private street is no longer applicable.]*

- 8) Execution. The project must be executed exactly as specified in the approved application package unless modifications are approved by the Town.
- 9) Approval. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of this approval unless otherwise updated, revised, clarified in some manner, or superseded in full or in part. In the case of conflicting information between documents, the most recent documentation and this notice herein shall generally be determining.
- 10) Shared driveway and HDC. The Durham Historic District Commission approved the improvements to the shared driveway as presented to the HDC, including the gravel shoulders, grading, removal of five trees as shown, and the pavement changes at the mouth. The applicant shall coordinate with DPW and NHDOT on plans to relocate the stone walls along Route 108 and inform the HDC of those plans once they are in place.

*[Added per the HDC approval on Wednesday.]*

- 11) Other permits. It is the responsibility of the applicant to obtain all other local, state, and federal permits, licenses, and approvals which may be required as part of this project.

Findings of fact. As part of this review and approval the Durham Planning Board finds the following: **A)** The applicant submitted an application, supporting documents, and plans for the project; **B)** The Planning Board accepted the application as complete; **C)** The Planning Board held one or more public hearing(s) on the application; **D)** The applicant revised and updated the plans and other documentation numerous times pursuant to comments from the Planning Board, public, and Technical Review Group, and other Town boards and committees; **E)** The application was first reviewed under the Design Review process; **F)** The Planning Board

reviewed the application in accordance with state law, the Durham Zoning Ordinance, the Durham Subdivision Regulations, and other applicable law and found that the application *meets all requirements* (except where waivers or variances may have been granted); **G**) This project is considered to *not be a Development of Regional Impact*; **H**) The Planning Board duly *approved the application* as stated herein; **I**) *Substantial records* are maintained of the process and documentation submitted in the Planning Department. A record of documentation and a timeline of the project will be prepared as needed; **J**) *Zoning Compliance*. This application complies with zoning requirements in terms of lot area, frontage, and other requirements. The frontage in the RB zone is 150 feet. Both lots meet this along Newmarket Road; **K**) As a 2-lot subdivision this is *exempt from the Conservation Subdivision* requirements.

\_\_\_\_\_  
Signature of applicant

\_\_\_\_\_  
date

\_\_\_\_\_  
Printed name of applicant

\_\_\_\_\_  
Signature of Planning Board Chair

\_\_\_\_\_  
date

\_\_\_\_\_  
Printed name of Planning Board Chair