



TOWN OF DURHAM
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Town Planner's Recommendation
Wednesday, March 11, 2015

- VIII. **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. Recommended action: Accept as complete and set public hearing for March 25.
- I recommend acceptance as complete and setting the public hearing for March 25

Thank you to the applicant for preparing such a complete and clear set of plans. Please note the following:

Process

- 1) Approval. I will prepare draft conditions of approval for the March 25 meeting.
- 2) Design review. This was reviewed as a design review application. That application was closed.
- 3) TRG. The applicant is coming to the TRG, probably for one final review, on March 17. We will get the signoffs then.
- 4) Conventional subdivision. Since this is not a conservation subdivision the submission requirements for design review do not apply.

Plans

- 5) Final plans. Various minor suggested changes are shown. I suggest these can be included on final plans (after Planning Board approval) as precedent conditions, unless the board would like to see any specific information prior to approval.
- 6) Contour elevations. Show contour elevations.
- 7) Note 18. Change “altercation” to “alteration.”
- 8) Minimum lot size. Revise usable area calculation on page 2 based on Section 175-64 under the Wetland Conservation Overlay District (The residual area should be higher than already calculated for usable area).
- 9) HDC. There is a note about HDC jurisdiction. I would suggest this be written in bold and underlined.

- 10) Easement size. Clarify the area of the conservation easement. I understand from the Land Trust that it has been reduced to 9.885 acres as 0.092 acres was taken by NHDOT for the road expansion.
- 11) Test pit heading. Confirm the correct test pit information and correct the heading on pages 2 on.

Private Road

- 12) * Maintenance agreement. We need a maintenance agreement for the driveway. This can also spell out conditions for the access easement. I think this is the only item needed prior to Planning Board approval. This will then be recorded with the plat.
- 13) * Frontage. There must be 150 feet of frontage either on Newmarket Road or on the private road. In the prior iteration the applicant showed the private road separately platted. I suggested making it part of the residual lot, which is much simpler, thinking that they had sufficient frontage on Newmarket Road. I was mistaken as they have less than 150 feet of frontage on Newmarket Road. Does the board consider the configuration of the shared driveway/private road to be a “private road” as presently shown for the purposes of meeting frontage or should it revert to the way it was shown earlier as a separately platter parcel?
- 14) Road design. The design of the road looks good. The applicant did a very good job in providing a plan, profile, and cross section to show exactly how the front section of the road will be rebuilt. A waiver will be needed from the Road Regulations which stipulate a 20 foot wide paved road. The layout was acceptable to the TRG. I will obtain signoffs from TRG members next week. Should the shoulder at the far end taper back to the road?
- 15) Driveway location. The proposed driveway for Lot 1 looks like the optimal location. The approval will specify that this is the approved location unless DPW approves a different location. The improvements to the private road extend 250 feet from Newmarket Road. The proposed driveway into the new lot is about 200 feet from Newmarket Road.
- 16) NHDOT. The applicant has submitted an application to NHDOT for the driveway permit (to expand use of the driveway and widen the driveway).
- 17) Improvements. The applicant said they will do the improvements to the driveway. There are 2 ways to approach this: a) the work could be physically completed as a precedent condition; or b) The applicant could provide an escrow/guarantee of some sort to cover the cost of construction. Then no building permit (or certificate of occupancy) would be issued until the driveway is completed. There should be a prominent note on the plans explaining this, for the benefit of the lot buyer.
- 18) Indemnification. 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

- 19) Street name. A street name would probably be needed with good signage of the addresses at Route 108.
- 20) Town Council. Town Council will need to authorize building permits on the private road
- 21) Not Town road. While it should be obvious, we will want to add a note that the road is a private road and will never be accepted by the Town of Durham as a town road unless it is rebuilt to full Town standards at the property owner(s) expense.

Utilities/Permits

- 22) *Waiver for above ground utilities. The applicant has requested a waiver from Section 9.05(B) in the Subdivision Regulations to allow for the existing electrical lines to remain above ground. They would be relocated to run along the existing driveway. They would serve both the existing house and the new house lot. I think this waiver makes sense. Alternatively, it would seem easiest and least disruptive to simply leave the line where it is and establish an easement for the rear lot. Would this be workable?
- 23) NHDES. The applicant has submitted an application to NHDES for the 2 lot subdivision. Obtaining the permit will be a precedent condition.
- 24) Septic design. A septic permit from NHDES will be required prior to issuance of a building permit.

Uses

- 25) Variances. Several variances were issued in the past for the property. Earlier, I proposed requiring these be abandoned. However, the proposed subdivision has been reduced from 2 new lots to 1 new lot, plus a number of citizens expressed strong feelings that the variances and approved uses for the main property not be changed to keep options for use open. Thus, I would not recommend any changes in this regard as part of the subdivision. Three variances have been granted for the property:
 - a) To allow for a mixed use residential/art center/theater/community center provided:
 - 1) there be no more than 9 residents in the main house, 2) there be a live-in, full-time property manager in the apartment of the main house; 3) all living space on the property be limited to non-rental, nonprofit use only; and 4) that the Planning Board focus on mitigating abutter concerns during the site plan process.

- b) For a sandwich board sign
- c) For a freestanding sign

Other Issues

- 26) * House size. Chief Kurz and other members of the TRG expressed concern about the house 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. Is this appropriate to specify?
- 27) * House location. The house location is prospective only. Does the board think any particular area should be specified? The HDC will have a say in the location, assuming the house is in the front area. In the rear, it cannot be located within the wetland buffer.
- 28) Garbage. The Town does not pick up garbage along the private road. The homeowners will need to bring their garbage to Newmarket Road. I assume there is no need for any type of shed near Newmarket Road for the garbage.
- 29) Conservation Easement. The land trust has confirmed that they see no problems with the subdivision under the easement.