



TOWN OF DURHAM
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- X. **Harmony Homes - Eldercare Facility.** Durham Business Park off Route 4. Site plan and conditional use for an eldercare (assisted-living) facility with 3 single-story buildings and 1 duplex with parking and associated improvements. The conditional use is for activity within the Wetland and Shoreland Overlay Districts and for an elderly housing duplex. John Randolph, Harmony Homes, applicant; Eric Chinburg, Grant Development, LLC, property owner; Mike Sievert, MJS Engineering, Engineer; Steve McHenry, Brandon Holben, and Mary Brake, McHenry Architecture, Architects. Tax Map 11, Lot 27-1 through 27-7. Durham Business Park Zone.
- I recommend the board accept the application as complete (including the waiver as requested immediately below), discuss the application, and consider whether to hold an extra meeting in October or November.

Process

- 1) **Submittal.** The applicant has submitted everything required on the checklist except for lighting and the utility connection application. He has requested a waiver to have the plan accepted and submit these items later. That is reasonable. There are also some other items that will be needed: more details on signage, a written construction management plan, details on the retaining walls.
- 2) **Revised plans.** The applicant submitted the plan set on September 2 and this was uploaded to the website and sent by email to the Planning Board. The applicant brought in revised plans yesterday, September 17. These revised plans are included in the packets and will be uploaded to the web. Many of the revisions are technical, pertaining to grading information (that was added) and utilities.
- 3) **Other information.** ****Is there other information, studies, or analyses that would be useful for the Planning Board to have when reviewing this project.*
- 4) **Public hearing.** The public hearing is scheduled for October 14 (I scheduled this per PB policy).
- 5) **Schedule.** The applicant is hoping to break ground this December (no doubt, an ambitious schedule). If all is in order that would mean an approval in November. Given that the board is holding only 1 regular meeting in October, on October 14 (due to the October 28 workshop) and 1 in November, on November 18 (due to the

holiday), I would recommend the board consider adding a meeting, such as on November 4.

- 6) Design Review. The design review was held. The board reviewed the project on July 8 and the public hearing was held on July 22, 2015.
- 7) Site Plan Regulations. Because the design review was held prior to the adoption of the new site plan regulations, this project need comply only with the prior set of regulations.
- 8) Site walk. A site walk was held on July 17.
- 9) Conditional Use. A conditional use will be needed for activity within the Wetland Conservation and Shoreland Protection Overlay Districts. The applicant is meeting with the Conservation Commission on October 8. The conditional use will be for various drainage structures (including gravel wetlands and a culvert under the road), footpaths, retaining walls, possibly a gazebo at the proposed outlook, the generator and transformer for Building #1, expansion of the existing sewage pump station for a horse barn, sewer upgrades, the fence for the paddock. As part of a conditional use it would be helpful to clarify how the grounds will be treated. The applicant will need to submit a narrative addressing the 8 conditional use criteria and address other requirements under conditional uses. A conditional use is also needed for the senior duplex (below).
- 10) Technical Review Group. The applicant met with the TRG on September 15 to discuss the new, formal application. General comments are incorporated into this writeup.
- 11) State approvals. The following approvals will be needed: NHDOT access permit, NHDES alteration of terrain, NHDES sewer permit, NHDES wetland permit for activity within 100 feet of a tidal wetland (no wetland filling is proposed), NHDES Shoreland Protection, and approval for the eldercare facility.
- 12) Department reviews. Though this is a large project the Public Works Department will be able to review this in house, rather than sending to an outside consultant. We have a memorandum from the Police Chief, and will obtain other department signoffs prior to approval.

Phasing

- 13) Phases. There will be up to 3 one-story buildings. Consider each building as a separate phase. The applicant proposes to have buildings (phases) #1 and #2 approved together. However, the second building will be built some time after the first. The applicant will not need to return to the Planning Board for phase #2 as the approval will include all aspects of phase #2. The applicant will then return to the board for approval of phase 3, for the third building in the future. As part of the Phase 1 and 2, we should be sure that the plan will accommodate the third building (in terms of the site, utilities, grading, parking, etc.) so that when it is designed in

the future it will fit onto the site as seamlessly as possible. Building 3 may have more services and fewer residences than buildings 1 and 2.

- 14) Phase 1. This will include construction of *Building #1* and associated improvements as shown on sheet C2, construction of the horse barn, upgrades to the sewer pump station, the sidewalk to Route 4, and all utilities and infrastructure needed to service Building #1. The applicant hopes to begin construction of Phase 1 in December 2015 and complete it by November 2016. The approval will specify this in detail.
- 15) Phase 2. This will include construction of *Building #2* and associated improvements as shown on sheet C3, and all utilities and infrastructure needed to service Building #2. The applicant hopes to begin construction of Phase 2 as early as the spring of 2017. In the event that the applicant seeks any changes to the approved site or architecture designs related to Phase 2 then he would need to return to the Planning Board and Design Committee, as appropriate, for those changes.
- 16) Phase 3. This will include construction of *Building #3* and associated improvements. See the holding area shown on Sheet OSP. The applicant will need to submit a new site plan application when he is ready for this phase. It should be clarified, however, if any special approvals would likely be needed for phase 3. The building footprint as shown on Sheet OSP nearly touches the Shoreland Protection Overlay District line.
- 17) Phasing of amenities. We will need to clarify which amenities/ improvements (sidewalks, gazebos, etc.) will be built in which phases.
- 18) Tidal permits. The timeframe for obtaining NHDES wetland permits is long so the applicant proposes no construction within the 100 foot tidal wetland as part of Phase 1. Permitting and construction of these elements (footpaths, etc.) could be done as part of Phase 2 or prior to the certificate of occupancy for Phase 1.

Zoning

- 19) Eldercare facility. The Durham Business Park Zone allows an eldercare (assisted living) facility by right. There may be a memory-care unit.
- 20) Density. Based on a parcel area of 28.4 acres (as shown on the plans as determined by Doucet Survey), the zoning could allow up to 141 beds/residents. According to Mike Sievert, the 28.4 acres includes the existing road (which is part of the gross acreage as long as it is not a Town road). The applicant had proposed up to 60 residents in the first building and fewer than 60 in the second building. We will need specific proposed numbers for the maximum number for each building, not to exceed a total of 141 for all 3 buildings.

Design Guidelines

- 21) Design Standards. When the Town conveyed the property to a private owner years ago, the Town executed a private covenant for Design Guidelines. These actually function as “standards” as they are mandatory. The review panel (or “design

committee”) is reviewing the architecture and site design for compliance. The Town has adopted Architectural Regulations but they do not apply beyond the Core Commercial area.

- 22) Design Committee. The committee is composed of the Town Administrator, Town Planner, Kitty Marple (Town Council representative), Peter Wolfe (Planning Board representative), and the Town Planner. Barbara Dill and Steve Roberts are Planning Board alternates. The meetings are open to the public.
- 23) Endorsement. The committee met on July 22, August 20, and September 16. The committee endorsed the plan on September 16 subject to various conditions. The memorandum is being sent to the Planning Board. The designs have gone through a number of iterations. I think the most recent design is very good.
- 24) Final items. The committee will review the architectural and site design again once everything is completed. There are some outstanding items to review – lighting, the fence for the paddock, a sign for the project, and any other outbuilding, such as a gazebo, that might be added.

Buildings

- 25) Buildings. The buildings are one story on a slab with a small basement area. The elevations and floor plans are included in the submittal. There will be interior courtyards. The courtyards will not be cleared of snow in the wintertime. The buildings will have a pass code so that residents cannot simply come and go on their own. The buildings will be about 20,000 square feet in size.
- 26) Duplex. The duplex could serve a property manager or a resident, but it would have to be an elderly person living there. *A duplex for elderly is allowed by conditional use.* A regular duplex is not permitted in the zone. The applicant said that he does not intend to sell this property (The units could theoretically be sold as condominiums). It would be best to not sell the units as the path going by them would become “privatized” if owned separately discouraging residents from walking there.
- 27) Floor plans. We will need a floor plan for Building #2 (or clarification how it might differ from that of Building #1). Note that LULA (limited use, limited application) on the floorplans refers to the elevator. JC is janitor’s closet. The difference between units A and B is that the bathrooms are larger in units A.
- 28) Skylights. There will be skylights in the faux chimneys.

Environmental Issues

- 29) Wetlands. All of the wetlands on site are subject to the Durham Wetland Conservation Overlay District as shown except for two: a finger of wetland just east of the road as a manmade wetland created by the culvert crossing the road and a very small wetland just east of the existing cul de sac, that is under 3,000 square feet and not a vernal pool.

- 30) Overlay Districts. The Shoreland Protection, Wetland Protection, and Flood Hazard Overlay Districts apply to the site. There is no Aquifer Protection district on site. Note that the Town's wetland buffers are 100 feet from tidal wetlands and 75 feet from freshwater wetlands, as shown on the plans. The shoreland buffers are 125 feet.
- 31) Permeable pavement. Mike Sievert does not believe this is practical due to clay soils within 4 feet of the surface. It would be helpful for him to provide some test pit information to the board.
- 32) Grass. Are any grassed areas proposed? The Conservation Commission may have recommendations for treatment of any landscaped areas.

Views toward the project

- 33) Conservation Easement. The applicant has agreed to establish a conservation easement for the front portion of the property in order to minimize the visual impact from Route 4. This would extend from the pump station forward to Route 4. The basic components of the proposed easement should be reviewed by the Planning Board prior to site plan approval – who will hold the easement and what are the proposed terms of the easement? The easement should be created and executed prior to any certificate of occupancy. I would suggest the board approving basic terms of the easement but not approving the precise language.
- 34) From Route 4. The Design Guidelines state that buildings shall be sited to preserve significant views from Route 4. Several views are shown from Route 4 on Sheet A306. The plans should indicate the vantage points for these views.
- 35) From the Oyster River. The Design Guidelines state that buildings shall be sited to preserve significant views from the Oyster River. The views from the river are fairly open to the site, at least for the stretch of river alongside the site. A view from the river is shown on Sheet A305. I think one more view would be helpful, with the vantage points shown on the plan. The board will want to discuss whether additional plantings would be appropriate to soften the views.
- 36) Field. The applicant would likely mow the field in the front area once a year or so to keep it like a field/meadow.

Site Design

- 37) Staking of site. Stakes are now in place on site for the four corners of the first two buildings, the front corners of the third building, the duplexes, and the location where the loop driveway splits off to the right.
- 38) Vegetation. 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. It appears that the applicant is accomplishing this. I do not believe that any of the existing trees on site are proposed to be removed.

- 39) Gazebo. I recommend adding a gazebo to the outlook near Building #2. This would be a nice amenity that McHenry Architects could easily design.
- 40) Overall parcel. The existing lots will be combined into one lot.
- 41) Horses. The applicant would like to have horses in the front portion, in the easement area, as a visual amenity. He envisions this area as being like a park. There could be a community garden. While this would be an attractive use, having horses would probably require a variance since they are classified as accessory animal husbandry which is not allowed in this zoning district. There would be stalls for 4 horses in the horse barn.
- 42) Signage. Some additional information is needed for directional signage. A design for an entry sign should be submitted, and will be reviewed by the Design Committee.
- 43) Lighting. A lighting plan will be submitted. There should be low key lighting with attractive fixtures along the entrance road.
- 44) Street trees. The applicant proposes to plant an avenue of maple trees along both sides of the entry road. Although the setting is fairly rural this formal design should be very attractive and serve as an inviting entrance to the project. The applicant will probably want to plant these in a later phase.
- 45) Landscaping plan. I will review the plan and offer suggestions later.

Traffic and Circulation

- 46) Route 4 access. NHDOT stipulated a maximum of 60 trips are peak hours in a memorandum from May 16, 2008 (though it must be determined if this standard still applies). The applicant has been in contact with NHDOT. A traffic analysis acceptable to NHDOT will be needed. Mike Sievert estimates this use would generate about 14 trips in the peak hour. NHDOT will determine if any improvements at the entrance are needed, such as a deceleration lane for vehicles turning right into the site.
- 47) Sight distance. NHDOT will examine sight distance at Route 4. The Police Chief states in his memo that it seems sufficient in his opinion. Some clearing of vegetation may be needed near the entrance.
- 48) Traffic study. The applicant has hired Steve Pernaw as his traffic engineer. Mr. Pernaw will prepare a study for NHDOT. The TRG did not think a separate traffic study for the Planning Board was in order other than to see Mr. Pernaw's report. This can be submitted to the Planning Board prior to site plan approval.
- 49) Private road. The existing road accessing the site will remain as a private road, but it will still need a name. The name was W. Arthur Grant Circle. We discussed with the applicant changing the name to Grant Circle for simplicity but to retain the recognition of Arthur Grant.

- 50) Pavement. The pavement appears to be in fair condition. There is sloped asphalt curbing on both sides. The applicant will likely place a 1 inch overlay on top. This should probably be done prior to the certificate of occupancy for Phase 1. He may make other improvements, such as a grind and overlay, after all construction is completed. Should this be a requirement or left to the discretion of the applicant at that time?
- 51) Bicycle racks. Appropriate facilities should be added as required in the zoning ordinance. These would likely not be used by residents but perhaps by employees and visitors. Thus, it would be beneficial to include some covered outdoor spaces but I do not think any interior spaces would be needed.
- 52) Coast stop. The applicant noted that there is a COAST stop just to the east of the entrance to the site. This should be shown on the plans.

Parking

- 53) Parking. The plans show 45 parking spaces for Buildings #1 and #2 with 2 handicap spaces. The spaces measure 9 x 18 feet as required including the required 22 foot access lanes. Details show the required layout and signage for the handicap spaces.
- 54) Parking #. Tom Johnson, Zoning Administrator, will need to confirm that parking is based on “Homes for the aged, disabled, or handicapped,” which seems the correct designation. This use requires 1 space per 5 beds plus 1 per employee on the maximum shift. According to the applicant, few residents would have cars.
- 55) Parking screening. The Design Guidelines state that parking areas shall be landscaped to reduce visual impact. We should determine whether any additional screening is needed for the parking areas.
- 56) Pump house. I believe that 4 or so parking spaces will be added next to the pump house for public use of the site.

Pedestrian Connections

- 57) Overall network. The overall layout of sidewalks and paths should be attractive, efficient, safe, accessible (as appropriate) and well integrated, with appropriate lighting and street furniture. It is preferable that the network extend all the way around the buildings if possible.
- 58) Around buildings. The sidewalk in front of the buildings will be concrete. Footpaths are shown to destinations along the river – a patio, overlook, and a dock. These should be asphalt around the buildings, and asphalt or stone dust leading to the river.
- 59) Sitting areas for residents. There should be several inviting locations, adjacent to the buildings and elsewhere on site, for residents to sit and enjoy the views.

- 60) Sidewalk. The sidewalk along the entry road will likely be 5 feet wide and built of asphalt. The planting strip should be wider, at least 10 feet wide, to allow for street trees and buffer people walking on the sidewalk.
- 61) Public access. The applicant is receptive to allowing public access to the footpaths and the riverfront but would want to restrict hours for the public. The purchase and sales agreement from the Town contained this language but it was not included in the deed. We would like to establish an appropriate easement to allow for public access as reasonable.
- 62) Old Piscataqua Road. It would be desirable to connect with Old Piscataqua Road if practical. This walking and bicycle path might run within the Route 4 right of way or across intervening properties if easements can be obtained. The TRG discussed this earlier, being perhaps 7 feet wide +/- . The surface would need to be determined – gravel, crushed stone, or asphalt. 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.
- 63) The applicant does not believe that such a path would serve his residents since this is an assisted living facility and the residents will leave only with staff people (except in the case of couples living together where one partner is independent; or visitors?) Generally, a Planning Board can require the property owner to develop an off-site improvement only if it serves the users of the site. Thus, the best approach is to try to work with the applicant in partnership to try to get a path built. The applicant suggested that this be worked on as part of Phase 3.

Fire Issues

- 64) 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.
- 65) Sprinklers. The large buildings will be sprinkled.
- 66) Fire Hydrants. There is one existing hydrant just to the north of the sewer pump house but it is not shown on the plans. This should be added. The applicant will check its condition. One new hydrant is shown in the planting peninsula opposite the buildings. We discussed relocating it to be closer to Building #1.
- 67) Duplex. The cottages on the point may or may not meet NFPA requirements. It will probably be sprinkled.
- 68) Cul de sac. The applicant will confirm that turning radii are workable for fire trucks.
- 69) Building requirements. Depending on exact use, the buildings will need to meet specific code requirements for elderly/assisted living.
- 70) Fire lane. The driveway in front of the 2 buildings will be a fire lane. We need to clarify the exact extent of the fire lane and how it will be marked.

- 71) 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

- 72) Services. The entirety of the site will be served by Town water and sewer. There will not be gas service to the site.
- 73) Sewerage. The applicant will investigate the condition of the sewer pump station and the existing sewer line. The force main may need to be rebuilt. Arrangements for maintenance and ownership of the pump station will be worked out with Public Works.
- 74) Underground. All utilities on site will be underground. The existing electric pole is right on the property line at the front of the property. I trust this meets the condition.
- 75) Energy Checklist. The checklist has been submitted. Per the Site Plan Regulations: "Except for those items on the checklist with which compliance is required by specific regulation, such as the standards under Chapter 38 of the Town of Durham Code of Ordinances, the applicant is encouraged (but not required) to satisfy the objectives contained in the checklist. Prior to Planning Board site plan approval, the checklist must be submitted and the applicant must meet with a representative of the Durham Energy Committee and the Building Inspector. Thus, the checklist is required prior to approval, not acceptance of the application."
- 76) Solar panels. This should be explored.
- 77) Equipment. The Design Guidelines stipulate that mechanical equipment be screened from public view. The generators will be served by propane tanks that will be added to the plans. The tanks will likely be buried.

Services

- 78) McGregor. Mr. Chinburg met with McGregor Memorial EMS for his project. We have a memorandum from Bill Cote, Executive Director, about the project. This was sent to the Planning Board. This may need to be updated.
- 79) Recycling. The applicant should include a recycling program. DPW would pick up the materials gratis.
- 80) Snow removal. Snow storage areas should be shown on the plans.
- 81) Addressing. The applicant will need to provide an adequate system of addresses for the buildings and residents.

Miscellaneous

- 82) Minor Plan Corrections
- 83) The flood lines should be added to the legend on Sheet EC. Legends should be added to the sheets as appropriate. Show more clear property lines. The retaining wall to the

far right of Building #1 will be removed. It would be helpful to have an aerial photo showing the building s and basic site elements included.

- 84) Additional details. We will need details for the retaining walls, the dock, the fence for the paddocks, and the gazebo if one is to be included.
- 85) Project name. The applicant will need to finalize the name of the project. He has another Harmony Homes project now in Durham.
- 86) Construction. The plan is for Eric Chinburg, current property owner, to construct the buildings.
- 87) Jobs. The applicant anticipates 30 full time jobs with the project.
- 88) Waivers. The applicant has requested a waiver from the School Impact Fee.
- 89) 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 (Also see item at the bottom).

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.

- 90) WWTP Indemnification and PILOT. See the information below.

Town Administrator Todd Selig sent the following email to me on May 19, 2015:

At the April 20, 2015 Town Council meeting, the Council approved a motion requesting the Planning Board to integrate the language below into any conditions of approval for a future development at the Durham Business Park. Please convey this information along to the Planning Board for its information and consideration when an application is ultimately submitted for the parcel.

Town Council member Firoze Katrak sent the following email to Todd Selig on April 21, 2015:

Hi Todd,

At yesterday's meeting, Chair Gooze asked me to send you the motion related to the Durham Business Park.

The motion as proposed and passed was:

"The Durham Town Council hereby instructs the Town Administrator to work with the Planning Board to ensure that two conditions are met:

1) there will be payments in lieu of taxes required if there is a non profit entity that operates/owns the business on this site; and,

2) any owner or operator of this site will at a minimum inform any buyer or leasee-tenant (of units) that they are buying or renting property adjoining a waste water plant, and that the town has the flexibility to operate the waste water plant (in different ways) as conditions change in the future."

End of Motion --- As further background that may help you and the PB implement the above motion, some key points made during our discussion included:

a) The Town Council would like the Planning Board to explore any possible indemnifications that the site owner could provide to the town. If that is not possible, then the minimum requirement for notification is as mentioned above.

b) It should be clear that the town has no obligation to run the waste water plant in the future as it runs it now, and if technology or other conditions change the town may run the plant differently as it so chooses

c) These conditions should ride with the property even if it is sold by the current developer

d) Encourage the Planning Board to incorporate the above items as requirements within the conditions of approval or some other recorded mechanisms.