



**TOWN OF DURHAM**  
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***Town Planner's Recommendation***  
**Wednesday, March 26, 2014**

XII. **50 Newmarket Road – Mill Pond Center Property.** Informal discussion of prospective application for a 3-lot subdivision. Seacoast Repertory Theatre, property owner; Jack Farrell, applicant. Tax Map 6, Lot 9-8. Residence B Zoning District. Recommended action:

- I recommend waiving the submittal requirements for a conservation subdivision since this would not be a conservation subdivision (waiver request submitted), discussing the proposal, providing comments to the applicant, holding a site walk if desirable, and closing the conceptual review or continuing it to a specific date.

Please note the following:

**Process**

- 1) Jack Farrell is assisting Seacoast Repertory Theater with this application. It is a conceptual application so no action by the Planning Board is called for other than providing comments to the applicant. As a conceptual application there were no notices and there is no public hearing.
- 2) The applicant met with the Technical Review Group on March 18. All pertinent comments are incorporated here.
- 3) If the application goes forward, then the applicant would need to hire a surveyor to do the plat.
- 4) The Subdivision Regulations require a substantial amount of information to be submitted at the conceptual stage. This information is part of the conservation subdivision review. Since the application is not for a conservation subdivision it would not be appropriate to submit that information now. A waiver request has been submitted and I recommend it be approved. There is sufficient information submitted, at this point, for the Planning Board to have a preliminary discussion with the applicant, which is the purpose of a conceptual review.

***SECTION 7: Submission Requirements***

*The following material shall be submitted for the appropriate phase of the process. If an applicant believes that any of the required information is not needed for the review of his or her application, the applicant may request, in writing, that the Planning Board waive the requirement.*

### **Subdivision**

- 5) This is a 3-lot subdivision. It meets the following criterion for exemption from conservation subdivisions.
  1. *The subdivision will consist of three (3) or fewer lots accommodating a total of not more than three (3) dwelling units and there will be no potential for the future subdivision of the parcel or any of the lots created by the subdivision nor for the construction of additional dwelling units on any of the lots,*
- 6) 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.
- 7) There may be only three dwelling units, so there would be a single family house placed on each of the two new lots. Accessory dwellings would be allowed in addition, as they are not considered separate dwelling units.
- 8) 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.
- 9) 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.
- 10) 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.

### **Conservation Easement**

- 11) 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.
- 12) The conservation land cannot be used to meet any density requirements under zoning.
- 13) The Town of Durham holds a secondary interest in the conservation easement.

### **Private Road**

- 14) The applicant is hoping to not be required to make any improvements to the private road. This will be the key point of discussion.
- 15) The road is paved and just under 12 feet in width.
- 16) 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.

- 17) The Fire Department was initially receptive to using the road as now built. They will look at this further.
- 18) 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*

- 19) The applicant may need to create a right of way around the driveway. The private driveway becomes a “private street” with this subdivision.
- 20) A permit from NHDOT would be needed to expand the use of the access off Route 108.
- 21) The Department of Public Works shared some preliminary thoughts on the private road, subject to adjustment later: widen the mouth at Route 108, square off the intersection, improve sight distance, level off the last 40 feet where it meets Route 108, create a turnout area for vehicles to pass each other.
- 22) Access easements and provisions for maintenance of the private road would be needed.
- 23) A street name would probably be needed with good signage of the addresses at Route 108.

**Other Issues**

- 24) Mr. Farrell said there would not be a homeowner’s association.
- 25) There are currently several actors living in the house and barn. Prior to approval of a subdivision the residual lot would have to be consolidated to one dwelling unit.
- 26) 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.

- 27) If the subdivision is approved, it might be appropriate to abandon some of the prior approvals and variances for this site. We will examine this further.
- 28) Drainage, utilities, trash collection, and other matters will need to be discussed.
- 29) If any proposed house or other structures subject to review (including a driveway and parking) on the lot closest to Route 108 is located within 250 feet of the centerline of the road then the design will need to be presented to the HDC for approval.
- 30) The 250 foot line for the historic district will need to be shown on the formal application.
- 31) It would be helpful for the applicant to meet with the Conservation Commission later to see if they have any concerns.