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Town Planner's Review
DURHAM PLANNING BOARD
Wednesday, May 10, 2017

- X. **Proposed Rezoning of lots along/near Newmarket Road.** Proposed rezoning of 5 lots on Map 5, including Lot 3-1 (10 Newmarket Road owned by JP Morgan Chase Bank), Lot 3-2 (14 Newmarket Road owned by Douglas Worthen), Lot 3-3 (Town lot), Lot 5-14 (Town lot), and Lot 7-0 (Town lot). The rezoning is proposed by the Durham Historic District Commission which recommends that the Planning Board initiate the zoning amendment.
- I recommend that the Planning Board discuss the proposal and set a public hearing for June 14.

Please note the following:

- 1) **10 Newmarket Road.** The historic house at 10 Newmarket Road (and the corner of Mill Pond Road) has been on the market for a while. See the photograph below. JP Morgan Chase Bank foreclosed on the property many months ago. According to several potential buyers who have looked at the property, it needs hundreds of thousands of dollars of work and the condition is threatened. The house has been vacant since around the time of the foreclosure.



- 2) Development of property. Mary Ellen Humphrey, Economic Development Director, and I have received a number of inquiries about acquiring the property. Most have been from parties interested in a more intensive use than a single family house. Ideas have included a restaurant, bakery, senior housing, professional offices, and subdividing the lot to create one or two more lots.
- 3) Rezoning. The house is zoned Residence A which is mainly a single family zoning district. Pretty much the only more intensive uses that the zone allows are multi-unit senior housing, day care, and a bed and breakfast. Mary Ellen and I believe that if the house were rezoned Church Hill then it would be easier to sell and adaptively reuse the property. The Church Hill district allows the same uses as Residence A plus eldercare facility, nursing home, art center, school, club, conference center, inn, hotel, restaurant, gallery, retail store, bank, medical clinic, office, and light manufacturing (Of course, some of these uses would not be practical or appropriate here and would likely not be approved). The minimum lot size in Resident A is 20,000 square feet; it is 5,000 square feet in Church Hill. The lot is 1.85 acres but it is questionable whether it could be subdivided. One additional lot might be possible. Two is quite unlikely.
- 4) Initiating amendments. Zoning amendments (including “rezonings” or “map amendments”) are adopted by the Town Council. Either the Town Council or the Planning Board may formally initiate a rezoning.
- 5) HDC recommendation. Mary Ellen and I proposed to Peter Stanhope and Andrea Bodo, chair and vice chair of the HDC, respectively, that I bring this item to the Historic District Commission for discussion, which they agreed to. At its meeting on April 6, the Historic District Commission voted to recommend that the Planning Board initiate a rezoning of this lot plus four neighboring lots (See maps below). (The vote was unanimous except for Andrea Bodo who abstained due to the proximity of her residence across the Oyster River.) Note that the process for this request by the HDC is similar to that of the earlier requests by the Agricultural Commission to initiate amendments regarding the keeping of poultry and goats.
- 6) Purpose. The HDC is recommending the rezoning both to facilitate the sale and rehabilitation of 10 Newmarket Road and in recognition of the existing semi-commercial/institutional nature of the immediate area. 10 Newmarket Road is situated on a main highway at an intersection and it is near Town Hall, The Three Chimney’s Inn, and the future Applied GeoSolutions (in the former Town Hall). Those properties are now zoned Church Hill or Courthouse but 10 Newmarket is close by.
- 7) Five properties. In order to form a more logical boundary of an expanded Church Hill District, the HDC recommends including 5 properties. See the zoning map (with asterisks) and tax map (with yellow highlights) below. Church Hill (CH) is shown in brown and Residence A is shown in yellow. The 5 properties include Lot 3-1 (10 Newmarket Road), Lot 3-2 (owned by Doug Worthen), and Lots 3-3, 5-14 and 7-0 (all owned by the Town).

- 8) Appropriateness of rezoning. Given the location of these 5 properties, the specific character of 10 Newmarket Road, the character of the immediate area, and the adjacency of the Church Hill, I think that this rezoning is appropriate and beneficial, and that it would not constitute spot zoning. I have spoken with Jim Rice, Durham Assessor, and he concurs that a rezoning makes sense.
- 9) Variances. If the property were not rezoned, a prospective buyer could still apply for a variance. However, variances can be challenging to obtain. We believe that rezoning the property up front would facilitate marketing of the property.
- 10) Project reviews. Any proposed change of use and changes to the site would require site plan review by the Planning Board. Any proposed changes to the exterior of the building and most changes to the site would also involve review by the HDC.
- 11) Process. If the Planning Board wishes to proceed, it would schedule a public hearing and then determine whether or not to initiate the rezoning. The Planning Board could also initiate an amendment other than what the HDC proposes provided the public hearing is held on that specific amendment. If the board initiates an amendment it would then be forwarded to the Town Council for consideration.
- 12) Opposition of one property owner. Note that the owner of Lot 3-2 at 14 Newmarket Road, Doug Worthen, opposes this rezoning. In an email to me he stated:

*Thank you for sending me this information, and for adding my comments to the email...Unfortunately I won't be able to attend Thursday's [HDC] meeting, but I would appreciate your bringing up my concerns if you are able...I was sad to hear that the property had been taken back by the bank. Please note on the zoning map how very close my property line is to the back of my house. The two previous owners had already given the town assurances that the 10 Newmarket would only be used as a single family dwelling, yet the first owner had an art gallery and the second had offices in the building. They extended their parking in my direction, and I have no doubt that any business would begin to use the land still closer to my home. This would decrease the value of my house as a residence. 10 Newmarket Rd was a gem only a few years ago, and I believe its highest and best use would still be as a single family dwelling. If the house is owned by the bank in foreclosure, it only **benefits the bank** to rezone so they will not have to take as much of a loss. Let them reduce the selling price so that a buyer can afford a true restoration of the building. Just a note on restoration costs. I have put a couple hundred thousand dollars into my home's restoration. Compliance with HDC rules has been expensive. I invested heavily in this property because I believed the zoning and regulations protected me.*

By changing to Church Hill zoning, as you say, you would give the new owner a strong case to subdivide by going from 20,000 sq ft. to 5000 minimum. If the new owner is a business, they will be motivated to maximize their return on the purchase through strong legal pressure.

The HDC was aware of Mr. Worthen's concern but still thought the rezoning makes sense. If his property is rezoned also to Church Hill there would be advantages for him with a wider range of potential uses. According to the tax records, Doug's property is in single family use. I believe that he has tenants in the house now. His address is

Illinois according to the tax records, though Mr. Worthen told me that he lives here off and on. As an affected property owner, Mr. Worthen would be notified by mail of the public hearing should the Planning Board schedule one.

