



TOWN OF DURHAM
15 NEWMARKET RD
DURHAM, NH 03824-2898



THOMAS F. JOHNSON
Zoning Administrator
Code Enforcement Officer
Health Officer

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May 20, 2014

Young Drive LLC
Attn: Francis Chase
14 New Zealand Road
Box 2815
Seabrook, NH 03874

RE: Zoning determination for Young Drive vacant lots

Dear Mr. Chase:

I am writing in response to your request that the town issue building permits for the remaining 7 lots of an 18 (now 16) lot subdivision approved in 1966. That subdivision plan approved only the lots, and not any improvements to the lots. In consultation with counsel, we have determined that not only do you require the relief for which you have already applied from the zoning board (i.e. special exceptions and variances with regard to Shoreland and Wetlands setbacks); but that you also require variances to construct residential structures on the lots. Let me explain.

The subdivision plan was approved in 1966, and is substantially complete, 9 of the 16 lots having been developed with structures, and the roads and utilities being complete. Therefore, the subdivision (i.e. the lots themselves) is protected from changes to the zoning ordinance, subdivision or site plan review regulations pursuant to RSA 674:39.

However, because the lots do not meet the current zoning requirements as to minimum lot size (40,000 SF), they are non-conforming and may only be developed in accordance with Section 175-29(A) of the zoning ordinance. You have conceded this point by applying for special exceptions pursuant to and variances from Section 175-29(B) of the zoning ordinance, which applies to non-conforming lots in the WCO and SPO Districts.

Section 175-29(A) of the zoning ordinance provides:

175-29. Nonconforming Lots.

A. Single, Vacant Nonconforming Lots. A nonconforming vacant lot . . . may be used for a . . . permitted use in a non-residential district provided that:

1. The lot is in a district where the proposed use is permitted.

2. The requirements of this chapter regarding setbacks, yards and height are met.
3. The arrangements for sewage disposal and water supply are approved by the Code Enforcement Officer in accordance with the provisions of state law.
4. The lot contains a minimum of 5,000 (five thousand) square feet of area unless a Special Exception has been granted by the Zoning Board of Adjustment.

Your proposed application does not meet these criteria, because Residence Single Family and Residence, Duplex are not permitted in the Coe's Corner Zoning District. Therefore, variances are required for the construction of the proposed residential structures. Moreover, please be advised that the newly constructed structures, be they single family or duplexes (if the variances are approved), will be required to comply with the so called "3 unrelated rule," because there are no existing structures on those lots which were rented to more than three unrelated individuals prior to the adoption of the zoning restriction, as there were in Durham v. White Enterprises, Inc., 115 N.H. 645 (1975).

You may appeal this Administrative Decision to the Zoning Board of Adjustment within 30 days of the date of this letter and/or apply for the required additional Variances. The application deadline for the June 10th ZBA meeting is May 23rd; or June 23rd for the July 8th meeting. In the meantime, the zoning board will continue processing the current applications before it, unless you wish that those proceedings be stayed pending a decision on the need for the additional variances.

As your attorney requested, the town's attorney and I are available to meet with you and your attorney to discuss this.

Sincerely,



Thomas F. Johnson
Zoning Administrator