The regular monthly meeting of the Dunbarton Zoning Board was held at the above time, date and place with Chairman John Trottier presiding.

The following members were present:

John Trottier, Chairman
Dan DalPra, Co-Chairman
Alison Vallieres, Secretary
James Soucy
John Herlihy

Town Offices:
Donna White, Planning and Zoning Department

John Trottier, Chairman, called the meeting to order at 7:00 p.m.

Meeting Posting:
The Chairman verified with the Secretary that the meeting notice had been posted in two public places throughout the Town and published in the Concord Monitor for one day. In addition, the notice was posted on the Dunbarton Web Page.

APPROVAL OF PREVIOUS MEETING MINUTES –September 10, 2018

MOTION:
John Herlihy made a motion that the Monday, September 10, 2018 minutes be approved as written. Dan DalPra seconded the motion. The motion passed unanimously.

7:05 P.M. - CONTINUED PUBLIC HEARING: DAVID WILLIS (C3-02-14) REQUESTS A VARIANCE TO ARTICLE 4, PARAGRAPH B. DIMENSIONAL REGULATIONS OF THE DUNBARTON ZONING ORDINANCE TO ALLOW HIM TO APPLY TO THE DUNBARTON PLANNING BOARD FOR A SUBDIVISION WITH A LOT WITH LESS THAN THE REQUIRED 300 FEET OF FRONTAGE AT HIS PROPERTY LOCATED AT 1066 GORHAM POND ROAD IN THE LOW DENSITY DISTRICT IN DUNBARTON, NH

Arthur Siciliano, Surveyor, appeared before the Board on behalf of his client, David Willis.
John Trottier, Chairman, noted that at the last meeting on September 10, 2018, Neil Semple had appeared before the Board and was asked to provide the following items for the Board.

1. Copies of the Conservation Easement
2. Length and width of right of way easement along with the purpose of easement.
3. Existing features should be shown such as well, septic, leach field, driveway with appropriate setbacks.
4. Also note the 50 foot setback along the proposed subdivision line.

Arthur Siciliano addressed the above requested items as follows:

1. The Conservation Easement was included on a 1991 Plan between James Starr/Cathy Green and the abutter. It was created to have protection to the Starr's property so that no one would build close to them, etc. He provided a copy of the Quitclaim deed which included the Easement and associated plan.

2. They (Starr's) added a strip of land 20' wide for an easement to put a driveway in the future. They wanted to be able to access the back 60 acres. It is a large parcel and this gave them a way into the back land.

3. Noted he located the existing house, leach field, driveway and well on the plan as submitted. Also showed potential house, leach field and well on proposed lot. There is room out front and it is a buildable lot.

4. Also show setbacks on the revised plan as requested.

At this point in the Continued Public Hearing, the following letter was read into the record from Rich Araldi, an abutter to the Willis property, see attachment.

There was no public comment.

At this point in the meeting, John Trottier, Chairman, closed the Public Hearing at 7:10 p.m.

Board Discussion:

John Trottier, Chairman, read the Criteria for the granting of a Variance as follows and noted the applicant had gone through the criteria at the September meeting.

1. The Variance will not be contrary to the public interest because:

John Trottier stated that the shorter frontage does not affect the property. It would be contrary to the public interest in that the frontage would be less than the Ordinance allows.

2. The spirit of the Ordinance is observed because:

John Trottier noted that the Spirit of the Ordinance is to have large lots with 300' of frontage. There is no requirement that frontage has to be contiguous.
3. Substantial justice would be done because:

John Trottier noted that the applicants never pursued annexing a small parcel from the abutter to add to their frontage to make the proposed lot with 300 feet of frontage. We have many irregular lots in Dunbarton and this could have been pursued. The Board agreed that this Criteria was not met.

4. The values of surrounding properties are not diminished because:

John Trottier noted they would be creating a building lot larger than the minimum. It is a buildable lot. Agreed that the request met this criteria.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

John Trottier noted that the request denial would not result in an unnecessary hardship.

James Soucy - Felt the criteria for a Variance has not been satisfied.

Alison Vallieres - Noted that there was another alternative to annex a portion from the abutter's lot to make a lot with 300' of frontage. If we grant this request for less than the required frontage, it will "open the door" for many requests to have lots with less than the required frontage. We should adhere to the requirements of the Ordinance.

**MOTION:**

Dan DalPra made a motion that the Dunbarton Zoning Board of Adjustment deny the Request for a Variance from David Willis (C3-02-14) to Article 4, Paragraph B. Dimensional Regulations of the Dunbarton Zoning Ordinance to allow him to apply to the Dunbarton Planning Board for a subdivision with a lot with less than the required 300 feet of frontage at his property located at 1066 Gorham Pond Road in the Low Density District in Dunbarton, NH for the following reasons:

1. Objections have been made by an abutter noting that the lesser than required frontage will affect him.

2. The Criteria for the granting of a Variance have not been met as there is a reasonable option available to the applicants which they have not pursued.

3. An available option to them does meet the Spirit of the Ordinance and having a lot with irregular lines is not unusual in Dunbarton.

James Soucy seconded the motion. The motion passed by a majority vote as follows:

Trottier - Yes
Vallieres - Yes
PUBLIC HEARING: ASHLEY & JUSTIN RIOUX (E3-05-06) REQUEST A SPECIAL EXCEPTION TO ARTICLE 4. 1. Table of Uses (c) OF THE DUNBARTON ZONING ORDINANCE TO ALLOW THEM TO HAVE AN EATING AND DRINKING ESTABLISHMENT ON THEIR PROPERTY LOCATED AT 1007 SCHOOL STREET IN THE VILLAGE DISTRICT IN DUNBARTON, NH

John Trottier, Chairman, opened the Public Hearing at 7:20 p.m.

Maria Dolder, Attorney, appeared before the Board on behalf of Ashley and Justin Rioux regarding their request for a Special Exception for an Eating and Drinking Establishment.

Attorney Maria Dolder gave a brief history of the property as follows:

In the 1930's and 1940's, the property was operated as a Tavern until the late 1970's. It was a restaurant used by the public and weddings and church functions. In 2016 was permitted by the Town as a Tea House with private parties. This was the most recent operation at the property. Ashley Rioux was led to believe that the use was grandfathered. She did move forward with her proposal. She was then told she did need Zoning Board of Adjustment approval and reached an agreement with the Town Attorney, etc. Ashley agreed to go through the Special Exception process. They are not proposing to make any changes to the outside of the property. There will be no entrance changes. All changes are in the interior.

This property was used back in the 1930's as a Tavern which predated Zoning and is considered a grandfathered use.

Ashley is proposing a Cafe which will serve breakfast (bagels, pastries, coffee, tea) and lunch, (sandwiches, soups year round) and Ice Cream from May - September. The hours for the Cafe will be 7:00 a.m. - 2:00 p.m. seven days a week. The Ice Cream service will be open from May - September from 4:00 p.m. - 8:00 p.m. The Cafe will close between 2:00 and 4:00 p.m. and open at 4:00 p.m. for Ice Cream during the months of May - September. No table service is proposed.

At this point in the meeting, John Trottier, Chairman, asked that Attorney Dolder put all the facts in writing. Attorney Dolder agreed and will provide it in writing.

Attorney Dolder stated there will be 16 seats. We are allowed 24 seats by the State. The remainder of the building is tenant occupied. There is a metal building in the back which has been rented by a tenant for storage.

Attorney Dolder addressed the Criteria for the granting of a Special Exception as follows:
a. No detriment to property values in the vicinity of the proposed development will result on account of: the location or scale of buildings, structures, parking areas or other access ways; the emission of odors, smoke, gas, dust, noise, glare, hear, vibration, or other pollutants; or the unsightly outdoor storage of equipment, vehicles or other materials.

The existing structure of the property will remain the same. Nothing is being changed. The building is where it sits. The parking area is already established and provides ample parking according to state and town regulations. It is a gravel parking lot in the back of the building. The prior owner used the parking lot for the Tea House. They will not be venting anything outside. Cooking will be on a hot plate, toaster oven, etc. There will be no storage of outdoor equipment. No emissions of any kind will be present on site. This property has previously been used for similar purposes. The Town standards for parking are in the Site Plan Review. The Planning Board is responsible for Site Plan Review. We have sufficient parking spaces. The State specifies 1 parking space for every 4 chairs. 16 divided by 4 = 4 parking spaces. They are planning to have some designated parking spots for the tenants to keep them separate. We meet the standards of a Special Exception for #1 Criteria.

b. No hazard will be caused to the public or adjacent property on account of potential fire, explosion or release of toxic materials.

There are no toxic materials on site. No gas on property or explosives. We meet the requirements for Criteria #2.

c. No creation of a traffic safety hazard or substantial traffic congestion in the vicinity of the proposed development.

No changes are being made to this property. The former owner used it for a Tea Room. Same as used by the previous owner. Parking already surpasses parking requirements, property has two means of existing egress, a complete turnaround, in addition to two means of egress onto Stark Highway. There will be no traffic congestion. There will be no traffic safety hazard. We meet the requirements for Criteria #3.

d. No excessive demand on municipal services and facilities, including, but not limited to waste disposal, police and fire protection and schools.

There will be no excessive demand on services. All services are private. Waste and water is private, police and fire are emergency service and are not required for scheduled service. Creating an eating and drinking establishment does not have any impact on schools. We have a updated septic design. We meet the requirements of Criteria #4.

e. The proposed use will not result in the degradation of existing surface and groundwater water quality standards, nor will it have adverse effects on the natural functions of wetlands on the site which would result in the loss of significant habitat or flood control protection.
We are not changing anything. Will not impact surface or ground drainage. Will continue to operate as in the past. The catch basin on the property allows for storm waters/run off to dump into two ponds. Previous owners did not have a problem. Will be addressed during the Site Plan Review process by the Planning Board. No issue with habitat. We meet the requirements for Criteria #5.

f. In addition to the standards specified above, special exceptions may be subject to appropriate conditions including the following:

1. Front, side or rear yards in excess of the minimum requirements of this Ordinance.
2. Screening of the premises from the street or adjacent property by walls, fences, or other devices;
3. Limitations on the size of building and other structures more stringent than minimum or maximum requirements of this Ordinance;
4. Limitation on the number of occupants and methods and times of operation;
5. Regulation of the design and location of access drives, sidewalks, and other traffic features;
6. Location and amount of parking and loading spaces in excess of existing standards;
7. Regulation of the number, size and lighting of signs in excess of existing standards.

Attorney Dolder stated they meet all the requirements for a Special Exception.

Attorney Dolder stated that they comply with 4.D. Non-Conforming structures. There will be no additional lighting on the outside. With regard to signs, they intend to comply with the Sign Ordinance. They will have three signs. They will also be reviewed by the Planning Board during Site Plan Review.

James Soucy asked what has been done with the existing septic system. It was noted that Jacques Belanger is present and the system has been approved by the State and they have not indicated there is a problem. There are no changes to the system. Jacques Belanger stated the old system is 14 years old. We are designing the new system. The new system will be on top of the old system.

Dan DalPra - Noted that you said there would be no alcohol served. He noted they need a permit from the State to serve food. The applicant stated it was not their intention to serve alcohol.

John Trottier stated you say this is an "Eating and Drinking establishment". We need to have it defined better. What was the drainage plan designed for?

Attorney Dolder stated they don't want to limit this to everything she serves. She would change her menu. That is why we left it open. In 1930 it was a Tavern and more recently a Tea Room with limitations on the Tea Room. John Trottier stated the burden of proof is on you. This doesn't fall under the old approval. The old approval was a Home Occupation. This is over and above the Home Occupation. Attorney Dolder stated they are preparing food on site. She stated the Tea Room had also prepared "Food on Site". That is what triggers this request.
Attorney Dolder stated that the existing apartments have sufficient parking areas. She stated the Planning Board has jurisdiction over the parking spaces. The use is for the Cafe. We have sufficient parking on site. She stated the Zoning Board does not act on the plan. There are four parking spaces provided for the Cafe. The use of this as a Cafe has no impact on the ground water. Nothing will change on the outside. There will be a dumpster. It was noted that the use of the Dumpster was not put in writing.

Attorney Dolder stated we wanted to get through this stage to know that they will be able to go forward to the next step. We are not asking for that to be waived.

James Soucy stated that F. (4) puts a limit on the number of occupants. Have you calculated the number as far as customers by daily, weekly, monthly basis.

Attorney Dolder stated the Cafe has 16 seats. Very similar to the last owner's use. There will be no impact on groundwater.

Board asked if this is going to be the same as the previous owner's use of the structure.

Attorney Dolder stated they are limiting the hours to breakfast and lunch. Did not want to expand into dinner.

James Soucy stated they will be limited to 16 seats.

Maria Dolder stated there will be no table service. People come in, take out their orders and then sit down. We are not going to anticipate 100 people. Between the time of 7 - 8 a.m. there will be more people. Previous owner, Koren, had between 16-18 seats. It wasn't full at any time. Are you asking us to do a Traffic Study?

John Trottier stated the traffic should be looked at. You pointed out what was previously done there. It was a Tea House by appointment. The Tea Room was different than this. This will be sandwiches and soup, etc. Will generate more traffic. We don't expect a Traffic Study, just the numbers you are expecting. Look at what was previously done. Go to the ITE Trip Generation Handbook regarding traffic for various uses, etc.

Attorney Dolder stated they are not required to do a Traffic Study.

John Trottier stated the Board was not asking for a Traffic Study. Go to the ITE Book.

Dan DalPra stated the parking spaces were based on nothing other than the seats. Need to be more specific than just number of seats to address the parking requirements.

Attorney Dolder stated the prior owner was operating for two years. We are going to be doing a very similar use. No reason to believe it will generate more. They do not live on the premises. The
prior owner got her approval because she was actually doing the business on site and lived on site. The use was similar.

Abutters were read as follows and noted all had been notified by Certified Mail:

**Kenneth & Susan Koerber** - Ken Koerber was present. Stated he regrets the adversity element regarding this application. Stated he was very excited about the potential. We moved here because there was a Post Office across the street. The Transition Group noted a lack of community for people to get together. Once again we have an opportunity for a meeting spot. As far as I can tell, I don't see the traffic being any more. I think it is a great idea. I hope we can work through these stumbling blocks. We need some element to bring a focal point for people to get together.

**Peter and Barbara Weeks** - Present. Peter and Barbara Weeks stated they feel the same way. He has lived here 34 years. Looking forward to it. A lot of the issues you have brought up will have to deal with the Planning Board. They are going to have to deal with the Planning Board.

**William and Anne Zeller** – Anne Zeller stated we are very excited, but concerned with extra traffic on School Street. Koren was only open on Sundays 10 - 2:00 p.m. We have Men's Coffee Chat. It is a great idea.

Town of Dunbarton - (It was noted that the Town Offices are an abutter, therefore notified)

Maria Dolder - Attorney representing the applicant

J. E. Belanger Land Surveying - Representing the applicant

A. C. Engineering & Consulting - Representing the applicant

Justin & Ashley Rioux - Applicants

**Other members of the Public:**

**Robert Patrick, 1007 School Street, Apt. F** – Stated he is somewhat a legacy tenant through the MacCubbin's and the present owners. Stated he works for the Dunbarton Telephone Company to bring broadband to the Town of Dunbarton. He noted that he saw what traffic the Tea House generated. Parking is an issue. There is enough parking for the tenants. The tenants park in the back. Currently, if they have a friend that comes over and stays overnight, there is not enough parking for the tenants. You have more cars in the parking lot and we are forced to park in the Town Parking lot. People are not going to walk 50’ from the gravel parking lot to the Café. Where is the overflow going to go? They will be parking on School Street or in the Town Parking lot. There will be six cars on Sunday afternoon. There are three cars in the parking lot. The Chief of Police has had to move to the back of the parking lot. I am forced to park in the Town Parking lot. The owner can’t control who is parking in the parking lot. There is going to be problems in the Town Parking lot. This is a concern.

Another concern for me is I am well behaved. They are renting that place out to anyone. What are he clientele they are renting to? Are they going to have a car jacked up that is not maintained? That is the biggest concern. What is going to happen?
We need a place to gather. It would be nice to have a Meeting place to have people come and socialize. There will be no alcohol. I have traveled to all parts of the country. It is a challenge to get in touch with residents in this Town. They need a place to meet. Dunbarton is very unique.

Michaela Lantiegne, 55 Zachary Drive – As soon as they put it on Facebook, I said I would have the opportunity to go and talk with others. Let’s get together and meet people. Don’t want to drive to Concord, etc. Agree with parking and driving. More about the coffee than to deny them the opportunity. There are tons of young moms who want to get together. We should be able to work out the parking issues together.

Board Discussion:

It was noted that it would be a good thing to have a gathering spot. We are asking for some additional feedback on the specifics on the hours of operation and traffic. It is our duty to go through the criteria and regulations for the granting of this request.

Jim Soucy – Noted that in this day and age this has been on Social Media. Takes away from comments. Suggestion may be to have more detailed information on a parking plan that is more suited to a more successful operation. There could be more vehicles. There would be 16 seats. May have 16 cars that show up. Know that criteria is under 3. c. and going to be an impact on two dead end roads that meet on this Common. We need more information on traffic and how parking for the tenants will be affected and resolved.

John Trottier noted that he wanted a better understanding of the hours of operation. Would like it in writing. The Zoning Ordinance specifies under criteria for Special Exceptions under Article 3. c. that there is no creation of a traffic problem in the vicinity, etc. We need a more in depth analysis of the traffic which will be generated by the Cafe. Would like to have them show us the number of vehicles this would produce. There is a shortage of information. We are not asking for a Traffic Study. We need to know the size of the parking lot and the parking spaces marked out on the plan. There is a lack of information regarding the parking. Without any information on the hourly or daily expected number of cars. This information is available in an ITE Manual. It would be better to have more information.

Item 3. c. states that there should be no creation of a traffic hazard. There are presently four or five tenants and there will be a Sandwich Shop. In the past, the Tea Room only operated between 10 - 2:00 p.m. on Sundays. Additional information should allow us to make a decision.

It was noted that cars can go to and from the school creating traffic, etc.

MOTION:
John Trottier made a motion to continue the Ashley and Justin Rioux Request for a Special Exception to the next meeting which is scheduled for Monday, November 19, 2018 at 7:00 p.m. James Soucy seconded the motion. The motion passed unanimously.
John Trottier, Chairman, announced that the Continued Public Hearing will be on Monday, November 19, 2018 and abutters will not be notified via Certified Mail.

OTHER BUSINESS:
Donna White, Planning and Zoning Administrator, presented a Draft of Rules of Procedure for the Zoning Board of Adjustment. The Board reviewed the draft and made changes.

There being no further business, the meeting adjourned at 9:20 p.m. with the following motion

MOTION:

Dan DalPra made a motion that the Dunbarton Zoning Board of Adjustment adjourn the meeting at 9:20 p.m. James Soucy seconded the motion. The motion passed unanimously.

Respectfully submitted,

Alison R. Vallieres, Secretary
ATTACHMENT:

Subject: Variance request 1066 Gorham Pond Rd

Greetings,

I received the letter advising us of the meeting regarding the requested variance at 1066 Gorham Pond Rd. I was unable to attend the meeting but wanted to give my input.

As the abutter at 1078 Gorham Pond Rd I believe my family and I will be most affected by a variance being granted.

I would request the variance not be granted for the following reasons:

My family and I greatly value the space and natural setting we enjoy in Dunbarton. It's one of the primary reasons we moved here 12 years ago. Ironically, when first looking at our property with the realtor, we were ensured that the lot in question would not be built upon due to zoning regulations. A house in that space would encroach on our space.

We greatly enjoy the wildlife that we are exposed to on our property (another reason for our move to Dunbarton). More houses = less wildlife, less trees, and less natural setting.

Our neighbors the Willis's seem like very nice people and this is nothing personal, but it is my understanding that they are cashing in and moving, making this a way to maximize their profits while they leave the community. While I can't fault them for trying to maximize their position, I feel it's not beneficial to my family or our community.

The requested variance is not for just a few feet but for over ten percent of the required frontage. If a neighbor needed help with a few feet to do something I could see being more inclined to agree, but in this situation I don't endorse.

Thank you for your time.

Respectfully

Rich Araldi