DRAFT, SUBJECT TO REVIEW, CORRECTION AND APPROVAL

DUNBARTON ZONING BOARD OF ADJUSTMENT
MONDAY, OCTOBER 21, 2019
DUNBARTON TOWN OFFICES – 7:00 P.M.

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. It was noted the Zoning Board Meeting was posted on the Google Calendar.

APPROVAL OF PREVIOUS MEETING MINUTES OF NOVEMBER 19, 2018

MOTION:

Dan DalPra made a motion that the Monday, November 19, 2018 minutes be approved as written. James Soucy seconded the motion. The motion passed by a majority vote with John Herlihy abstaining as he was not present at the November 19th meeting.

ELECTION OF OFFICERS:

John Herlihy made a motion that John Trottier be elected as Chairman for the upcoming year. Dan DalPra seconded the motion. The motion passed by a majority vote with John Trottier abstaining.

John Trottier made a motion that John Herlihy be elected as Vice Chairman for the upcoming year. Dan DalPra seconded the motion. The motion passed by a majority vote with John Herlihy abstaining.
John Herlihy made a motion that Alison Vallieres be elected as Secretary for the upcoming year. John Trottier seconded the motion. The motion passed by a majority vote with Alison Vallieres abstaining.

7:10 P.M. - PUBLIC HEARING: FALCON HEIGHTS PROPERTIES, LLC, REQUESTS AN ADMINISTRATIVE APPEAL OF THE DECISION OF THE DUNBARTON PLANNING BOARD REGARDING ARTICLE 3. B. (2) Interpretation of District Boundaries OF THE DUNBARTON ZONING ORDINANCE TO ALLOW THEM TO APPLY TO THE DUNBARTON PLANNING BOARD FOR A SUBDIVISION AT THEIR PROPERTY LOCATED AT 20 STARK HIGHWAY SOUTH IN THE VILLAGE/MEDIUM DENSITY DISTRICT IN DUNBARTON, NH

John Trottier, Chairman, opened the Public Hearing at 7:05 p.m.

Marie Dolder, Attorney, appeared before the Board on behalf of her client Falcon Heights Properties, LLC

She reviewed supporting information that was attached to the application for appeal, see attached.

Board Comments:
James Soucy asked if there was any explanation of what points the Planning Board used to determine their decision.

It was noted there was no discussion at the Planning Board meeting.

Ken Swayne, Chairman, Planning Board – Addressed the Board regarding the Planning Board decision, it is not my determination. There have been three lots that have been subdivided in a similar manner in the area of this subdivision. One of them, I did not participate in as I was an abutter. The Board felt that due to the lots being split in the Village District and Medium Density even though it went into the three acre zone. It appears this is a practice of the Planning Board since 1985. The Village Zone is 300 feet on either side of the road.

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

Jeremiah/Andrea Coulie – Not Present
Edward/Sherilyn Paquette – Not Present
Edward/Heima Majewski – Not Present
Sandra Mannion Trust – Sandra Mannion present. Stated she was concerned about the effect on her property with changes across the street. My property will be directly across the street from any development.

John Trottier explained that these concerns would be considered by the Planning Board and not the Zoning Board of Adjustment.

Jeff and Bronda Crosby – Jeff Present. Jeff stated he lived at 17 Stark Highway South. Stated he thought that the Planning Board did a disservice to the applicants when they decided not to accept the application. They may have had a private meeting. I don’t remember them having a Public Meeting to discuss this. Some lots have been subdivided similar to these lots in this area.

John and Janet Casey, Not Present but represented by David Foster with a letter which was read into the record by John Trottier, Chairman, see attached.

Suzanne Majewski – Present
Timothy Langley – Present
Russell/Catherine Dumont – Not Present
Robert M. Foster – Not Present
Marie Dolder, Present (Representing the applicant)
Jacques Belanger, Surveyor for the applicant

Other Members of the Public:
Dana Lemire, 31 Stark Highway. Asked “Do you see them trying to sell the property. You are allowing people to be able to subdivide. 40 properties have been able to be developed. Is the Zoning Board going to change that?”

Board Members:
John Trottier noted that we need to either follow the property lines or consider 50% of the lot, etc. to determine what district lots fall into. This Zoning Ordinance needs to be made clearer. This was created in 1985. The Planning Board should be amending the Zoning Ordinance to clear up this problem.

Alison Vallieres stated that according to the survey, it appears at least 2/3 of the property is within the Village District. In addition, three other properties which were split between the two districts have been subdivided recently. I would suggest that the Planning Board amend the Zoning Ordinance so it is understandable. In addition, I feel the applicant’s request should be granted by the Zoning Board of Adjustment.
Dan DalPra stated that a precedent has already been set. It is pretty clear that this has been done in the past.

DECISION:

John Herlihy made a motion that the Dunbarton Zoning Board of Adjustment grant the request for an Administrative Appeal from Falcon Heights Properties, LLC to allow them to apply to the Dunbarton Planning Board for a proposed subdivision at their property located at 20 Stark Highway South (E3-03-09) in the Village/MDR District. This decision is based on the information presented by the applicant and Board discussion. Dan DalPra seconded the motion. The motion passed unanimously.

OTHER DISCUSSION:

Jim Soucy stated that he had researched the Zoning Map on the Dunbarton Web Site and it appears to be very misleading. Once the map is blown up, the location of the Village District versus the Medium Density District is very unclear. We should take the map off the site completely until such time as it is corrected, etc.

Donna White brought the Zoning Board up to date on the progress of proposed Zoning Changes. She noted that they have had meetings since April 2019. They are proceeding slowly at this point.

Alison Vallieres stated that her situation had changed drastically in the past month and she would be able to attend meetings along with Donna White on the Zoning Board changes. She is also a member of the Planning Board and would like to give her input for the proposed Zoning Board changes.

The Zoning Board felt this was a good idea especially since there are Zoning Board changes which really need to be incorporated into the Zoning Ordinance especially the particular section that brought up this case.

The Zoning Board of Adjustment agreed that changes to the Zoning Ordinance should be worked on immediately and ready for submittal for voting on at Town Meeting in March 2020. Time is of the essence and the Planning Board should be working towards this goal now.

There being no further business, the meeting adjourned at 7:50 p.m. with the following motion:
MOTION:
John Herlihy made a motion that the Dunbarton Zoning Board of Adjustment adjourn at 7:50 p.m.. The motion was seconded by John Trottier. The motion passed unanimously.

Respectfully submitted,

Alison R. Vallieres, Secretary
Administrative Appeal of Planning Board Decision
Falcon Heights Properties, LLC
Tax Map E3-03-09; Stark Highway South

At its meeting on September 18, 2019, the Planning Board deemed the subdivision application submitted by Falcon Heights Properties, LLC incomplete because it does not meet “Current Zoning” based on the Board’s interpretation of the Dunbarton Zoning Ordinance, Article 3, Section B (2)(e). We respectfully disagree with the Planning Board’s interpretation of the Zoning Ordinance and therefore submit this Administrative Appeal for determination by the ZBA.

1. **CLEAR LANGUAGE OF ZONING ORDINANCE.** In the first instance, Article 3, Section B(2) of the Zoning Ordinance is entitled Interpretation of District Boundaries (emphasis added). This is the first indication that this Section of the Zoning Ordinance is used to interpret district boundaries. This is further clarified in the fact that Article 3, Section B(2) goes on to state in express written terms, that “Where any uncertainty exists with respect to the boundary of any district as shown on the Zoning Map, the following rules shall apply.” (emphasis added) In this case, there is no uncertainty as to the location of the boundary of the zoning district. The Zoning Ordinance has a clear, detailed description of the Village District boundaries, which has been located by the Applicant’s surveyor on the proposed subdivision plan. As a result, pursuant to the clear, written language of the Zoning Ordinance, Article 3, Section B(2) does not apply to this application and therefore, the decision of the Planning Board that it does apply should be reversed.

Without waiving any rights to appeal the decision based on the above, and solely in the event that the ZBA disagrees with the interpretation as outlined in number 1 above, we submit the following further arguments in support of our position that Article 3, Section B (2)(e) does not apply to this application:

2. **CLEAR LANGUAGE OF SUBSECTION E.** In the event that the ZBA gets to Subsection (e), that section states “Where a district boundary line divides a lot, the use in either zoning district into the adjoining zoning district a distance of not more than twenty (20) feet.” (emphasis added) Once again, by the clear language in the Zoning Ordinance, this Section would not apply to the Applicant’s Planning Board application. First, the use being proposed by the applicant, residential, is permitted by right in both zoning districts and therefore would be allowed in either portion of the property. Second, the applicant is not proposing to extend any actual use into the adjoining zone. In fact, the words “the use” in the Zoning Ordinance, as opposed to “dimensional requirements” or any different description, further demonstrates that this Section of the Zoning Ordinance is only meant for circumstances where the zoning district boundary is unclear. It would appear that when the location of a zoning district boundary line is unclear, this Section of the Zoning Ordinance would actually allow an applicant some flexibility in the use of the lot into another zone.
3. **PAST INTERPRETATIONS BY THE BOARDS.** Although the ZBA has not previously been faced with making a formal interpretation of this Zoning section, the Boards have clearly made an interpretation of this zoning matter and applied it to similar applications in the past. This is demonstrated by the fact that other properties within the Village District have been permitted to be subdivided, even though the lots are split zoned, without the need for a variance or any other relief from the Zoning Ordinance. Based on the published Zoning Ordinance, Article 3, Section B(2)(e) was not recently added or amended and therefore was clearly in effect at the time of the most recent subdivision applications in the Village District. In fact, it would appear that the Applicant’s application is the first instance that this section has been raised in connection with such a proposal.

4. **PRACTICAL EFFECT OF SUCH AN INTERPRETATION.** Based on the Town’s Master Plan and the creation of the Village District in the Zoning Ordinance, such a district was created to allow for slightly more density within this area of Town. When the Village District was created, it was done so in a very arbitrary manner. Meaning, the district boundary extends 300 feet from the centerline of the road. The establishment of the district boundary in such a fashion did not take into effect the physical characteristics of the lots that would be part of the Village District. In fact, the practical effect is that the majority of the lots located in the Village District are split zoned with the MDR zone. Based on the tax map, it appears that there are approximately 54 lots within the Village District and 45 of those lots are split zoned. It further appears that the majority, if not all, of the 9 lots that are located solely in the Village District are non-conforming with the acreage requirements. As a result, in the event that the ZBA were to suddenly interpret Article 3, Section B(2) of the Zoning Ordinance in a manner which prevents the Applicant’s subdivision application, it will have the effect of wiping out the majority of the Village District. This is not a reasonable interpretation of the Zoning Ordinance and is in direct conflict with the very establishment of the Village District and with the expressed desire to focus growth around the Village District in the Town’s Master Plan. If this is the result that was intended by the Zoning Ordinance, the establishment of the Village District would be rendered meaningless and the Zoning Ordinance should be amended to properly reflect this. As this Board is aware, a Zoning Ordinance must be interpreted to take into consideration the Zoning Ordinance as a whole and to resolve conflicts in the Sections of the Zoning Ordinance in a reasonable fashion so that the Ordinance makes sense. A new interpretation of the Zoning Ordinance which has the practical effect of wiping out the majority of a zoning district established in the Zoning Ordinance is not reasonable.

Based on the above, it is our position that Article 3, Section B(2)(e) does not apply to the Applicant’s application for subdivision, or if it does, it is not interpreted to prevent the Applicant’s proposal and therefore its application does meet Current Zoning and can go back to the Planning Board for further consideration without the need for any relief from the ZBA.
In response to #4 on the Application.

What provisions may need to be made for septic disposal, fire protection, water supply, parking, noise, smoke, surface drainage, etc.

The proposal before the Planning Board is for a residential subdivision; therefore it will require services that are typical for single family homes and will not result in any smoke or unusual noise, etc. The water and septic will be on-site, private systems.
I live at 11 Stark Highway South (39 years) that just about 50 ft shy of the northern edge of this property. Janet and John Casey, Abutters, asked me to represent them with their concerns too as they are unable to attend. I also am unable to attend the Oct 21 meeting, so I am submitting my comments in writing in relation to the proposal for development into four house lots as follows:

1. This section of Stark Highway South has people passing through town speeding up above 30 MPH once they come over the hill from our house at 11 Stark Highway South heading south.

2. In about a 900 ft span, if these houses are allowed to be built, there will be will a total of 14 driveways entering Route 13 with at least 2 cars or more, for a total of 22-23 cars plus commercial vehicles entering Route 13. The traffic is going to be congested more than it already is in this stretch of road. I didn’t realize I was living in a city.

3. There is a commercial private excavation company with large trucks and trailers entering and leaving almost daily out of one of the driveways to add to the congestion.

4. I am concerned that a precedent would be set to waive the 2 acre vs 5 acre zoning in this area as I see the land straddles both village and medium density zoning. We have the zoning set for a reason. Why should this proposal receive a waiver?

5. This section in Dunbarton is the southern gateway and face into the village area. Our town has a reputation of being an attractive town with the kept up historic houses and the blended newer modest houses. I want to know what style of house is going to be built? Are they going to be spec houses or is just the land being sold? The spec houses I have seen so far in town are not very attractive, look like boxes that belong in suburbia with no character. Please note the houses along this 900 to 1,000 ft stretch, except for the Federal on the property already, are all small, modest houses, some are historic and some are just modest houses. The houses I have seen built in the developments around Dunbarton look like they belong in city suburbs and not in the country in a historic village district. I am relieved to see that the Venalor’s historic house will remain.

6. I am also concerned at the rate of building in Dunbarton and its affect on the school population. We just refurbished the school and I wonder how soon we will have to build on to it again with too rapid of housing development.

Here ends my public comment,
Thank you for the opportunity to comment on development that will forever affect my house and the Casey’s house. I hope you think carefully about what is to be allowed that will forever change our neighborhood.
Attached is the document Janet signed and gave to me to represent them in their absence.

Debra Foster