



Town Of Durham

Planning Board Minutes

Fire Station Meeting Room, 6:30 pm

December 4, 2024

1. Roll Call & Determination of a Quorum

In attendance: John Talbot (Chair), Juliet Caplinger (Vice Chair), Allan Purinton, Brian Lanoie, Marc Derr and George Theborge (Town Planner).

2. Amendments to the Agenda:

Brian Lanoie would like to discuss at the end of the meeting, the CEO monthly report and discuss an email that was received on November 14th regarding Granite Hill.

Motion made by Juliet Caplinger: To accept the amendments to the agenda. **Motion seconded by John Talbot:**
Votes to approve: 5 Votes to deny: 0

3. Acceptance of Meeting Minutes (November 6, 2024)

Motion made by Allan Purinton: To accept the meeting minutes for November 6th. **Motion seconded by Marc Derr:**
Votes to approve: 5 Votes to deny: 0

4. Informational Exchange on Non-Agenda Items:

a) Town officials (George Theborge, Town Planner)

- On November 19th, 2024 the town adopted the moratorium on Battery Energy Storage Systems (BESS) and the Select Board met subsequent to that and asked the Town Attorney to prepare amendments to the Land Use Ordinance to institute contract zoning as a mechanism for controlling the locations of those facilities and asked the Planning Board to put together the BESS performance standards. There will be no potential application for a BESS facility coming before the Planning Board before the next Town Meeting.

b) Residents: None

c) Non-Residents: None

5. Continuing Business:

a. Public Hearing on Preliminary Plan Application for Proposed Phase 2 of Bowie Hill Subdivision, Map 10, Lot 38

John Talbot officially opened the Public Hearing for Bowie Hill at 6:32 pm. No one asked to comment on the application and Mr. Talbot closed the Public Hearing for Bowie Hill at 6:33 pm.

b. Substantive Review of Preliminary Plan Application for Proposed Phase 2 of Bowie Hill Subdivision, Map 10, Lot 38

- Mattie Lane will be extended 1100 feet to a turnaround.
- The applicant is proposing a cluster subdivision with reduced lot sizes and road frontage. One conventional lot is proposed on Bowie Hill Rd.
- The proposed homes will be served by private wells and septic systems.
- The application contains a fees calculation based on rates that were changed by the Select Board in July of 2024. The applicant paid the updated fees.
- The application includes soil tests for each of the lots with documentation that the septic systems meeting requirements of the Maine Subsurface Wastewater Rules are doable on all of the lots.
- The application includes documentation of well water yields in the area and a groundwater quantity analysis indicating there will be sufficient groundwater to supply the proposed homes in drought conditions.
- The site layout plan (Sheet C-101) shows well exclusion zones covering up to 3/4 of the area of the individual lots. Therefore, wells will need to be drilled on the rear of each lot.
- Note 3 of the site layout plan states that each lot will be limited to 20,000 square feet of developed area as indicated on the plans. If wells are located on the rear of the lots, clearing for access and drilling of the wells may affect the amount of developed area of the lots, especially if multiple wells are drilled to reach bedrock fissures with adequate potable water supply. An overlay of the plans reveals that the septic systems and wells on many of the lots will be in portions of the lots designated as remaining wooded. There appears to be little correlation between proposed cleared areas on the lots and how they will actually be developed. Flexibility in home siting will be limited in this cluster subdivision by the reduced lot sizes, septic and well locations, and clearing restrictions. The draft approval conditions address this concern.
- Maintenance of the stormwater treatment features on Lots 14 and 24 is required by the homeowner association, and easements for that purpose must be included on the final plan.
- The applicant has requested a waiver of the requirement for on-site water for fire protection. The applicant proposes to require all homes in the subdivision to be served by a residential sprinkler system. The Fire Chief supports the waiver request.
- The project requires a site location permit from the Maine Department of Environmental Protection.
- The project site is within the watershed of Runaround Pond, triggering the need for phosphorus management following DEP guidelines (required for final plan approval).
- Staff has included a draft preliminary plan approval decision template. The approval conditions track the subdivision standards and verify that the standards will be met when findings of fact are prepared at final approval stage.
- If the Board grants preliminary approval based on an initial review of the subdivision criteria and standards, the applicant can proceed to a final plan application with complete engineering, financial, and legal documentation that have been peer reviewed for accuracy.
- To expedite the review process, staff recommends that the applicant seek engineering peer review prior to submission of the final plan.

Applicant - Charlie Burnham

The applicant has requested a waiver of the standard that requires a fire pond. The use of sprinklers instead of a fire pond has been approved by the Fire Chief.

Motion made by Allan Purinton: To approve the waiver. **Motion seconded by Brian Lanoie:**
Votes to approve: 5 Votes to deny: 0

The Durham Road Commissioner requested that the applicant provide annotation of the line of sight of the driveway near Bowie Hill as well as a detail on the final plan of what the crossing looks like when you leave Mattie Lane and head out onto the main road. Is there a culvert there and where is the water going?

Draft Conditions of Approval

Board is requesting that if this is approved, the following corrections are made on the final plan:

- Technical typos corrected on final plan.
- Detailed plan of the culverts underneath all driveways.
- Document the line-of-sight distances on the final plan.

Motion made by Allan Purinton: To approve the draft conditions of approval with the above corrections to be included on the final plan. **Motion seconded by Marc Derr:**
Votes to approve: 5 Votes to deny: 0

6. New Business:

a.) Maintenance Agreement Review for Cranberry Drive and Lane, Map 4, Lot 103B

Applicants – Tyler and Jennifer Larochelle

- The applicants are seeking approval of a maintenance agreement for a private road off Swamp Road.
- This road was created to serve as road access to back lots that were exempt from subdivision review as family lot transfers.
- Based on a review of deeds recorded in the Androscoggin County Registry of Deeds, it appears that the divisions and transfers started in 1999 and have continued up through 2024.
- In 2004, Durham enacted a requirement that all such access roads be covered by a recorded maintenance agreement approved by the Planning Board under the provisions of Section 5.23 of the Land Use Ordinance.
- Any new lots created on Cranberry Drive after March 6, 2004 would have been subject to the requirements of Section 5.23.
- Section 5.23 applies the following requirements to road maintenance agreements:
 1. Statement of ownership interests;
 2. Statement that subsequent lots that are created must be parties to the maintenance agreement;
 3. Acknowledgement that the Town has no responsibility for maintenance;
 4. Statement that responsibilities transfer to all subsequent owners of the lots with Planning Board notification;
 5. Requirement that all deeds for the lots reference the maintenance agreement;
 6. If the private way is an extension of an existing road, an offer must be made for participation by the existing lot owners;
 7. Authority to place liens for non-payment of maintenance costs; and,
 8. Requirement that the maintenance agreement be recorded and no building permits issued for new lots until that happens.
- The applicants submitted a Planning Board application and copy of a maintenance agreement that are posted on the website.

- The maintenance agreement follows an agreement approved by the Planning Board for James Place in 2021 that was provided to them by the Code Officer.
- The language of that agreement does not appear to strictly conform to the requirements for authority to place liens on individual lots for non-payment of maintenance costs.

Motion made by Allan Purinton: The Town of Durham requires that this agreement permit property owners to place a lien on the property of a signatory who has not satisfied their share allocated to them in the amount of the unpaid assessment for the cost of maintenance for Cranberry Drive for the private deeded way.

Motion amended by Allan Purinton to include both Cranberry Drive and Lane in the agreement and removing the Planning Board from the agreement as requiring the lien (the Ordinance requires it). **Motion seconded by Juliet Caplinger:**

Votes to approve: 5 Vote to deny: 0

6. New Business (continued)

b.) Conditional Use Review for Automotive Repair Shop at 1586 Royalsborough Road, Map 1, Lot 56

Applicant – Justin Dugas

- The applicant is seeking conditional use approval for an automotive repair business at 1586 Royalsborough Road.
- The applicant has been repairing vehicles part time in his garage and intends to go full time and build a new building for the commercial venture.
- The Land Use Ordinance provides a two-stage process for review of such applications.
- Conditional use under Article 7 first looks generally at the proposed use in terms of the following criteria:
 1. Public Health Impacts;
 2. Traffic Safety Impacts;
 3. Public Safety Impacts;
 4. Environmental Impacts;
 5. Scale & Intensity of Use; and,
 6. Noise and Hours of Operation.
- In addition to these reviews of potential negative impacts, the Board must also determine that the applicant has positive right, title, or interest in the property and has the financial and technical ability to meet the Ordinance requirements.
- The Land Use Ordinance has no specific standards for automotive repair businesses. General standards for noise limits and storage and disposal of hazardous materials would apply.
- If the Board determines that the applicant has satisfied the burden of proof for compliance with the conditional use criteria, it grants a conditional use permit, with or without approval conditions.
- If construction of buildings or parking areas is involved, the applicant then applies for separate site plan approval of the proposed improvements in terms of compliance with Article 8, which contains the performance standards for such site improvements.

- The website posting for this agenda item contains the application, photographic details of the property, and a draft set of findings of fact based on the submitted application along with standard approval conditions.
- Based on its review of the application and the applicant’s presentation, the Planning Board can add findings and conditions of approval it deems necessary to assure compliance with the conditional use criteria.
- The Planning Board can also decide on the need for a public hearing on the application, which could take place before making a decision on the conditional use application or as part of the site plan review process.

Section 7.4 CONDITIONAL USE REVIEW CRITERIA

1. **Public Health Impacts:** The proposed use will not create unsanitary or unhealthful conditions by reason of sewage disposal, emissions to the air or water, or other aspects of its design or operation.

Findings:

- a. Air emissions will not be affected as all work will be conducted indoors.
- b. Sewage: There will be no bathroom at this time. Applicant will use house facilities.
- c. Water run off: This will be addressed through grass/crushed rock & bark mulch before it enters the natural swale leaving my property.
- d. Trash will be disposed of in my dumpster that I have on site.
- e. Applicant to provide details on waste storage and disposal per Section 5.26 of the Land Use Ordinance.

Motion made by Allan Purinton: The applicant has satisfied a reasonable burden of proof of compliance with the criterion for public health impacts. **Motion seconded by Marc Derr: Votes to approve: 5 Votes to deny: 0**

2. **Traffic Safety Impacts:** The proposed use will not create unsafe vehicular or pedestrian traffic conditions when added to existing and foreseeable traffic in its vicinity.

Findings:

- a. Traffic will be less than 10 vehicles per day, customers/deliveries.
- b. DOT entrance permit is not required.
- c. Entrance of driveway will be kept up and clear for maximum visibility.
- d. Add site distance on the site plan.

Motion made by Juliet Caplinger: The applicant has satisfied a reasonable burden of proof of compliance with the criterion for traffic safety impacts. **Motion seconded by Marc Derr: Votes to approve: 5 Votes to deny: 0**

3. **Public Safety Impacts:** The proposed use will not create public safety problems which would be substantially different from those created by existing uses in the neighborhood or require a substantially greater degree of municipal services than existing uses in the neighborhood.

Findings:

- a. There are several local businesses around me. Logging, excavation, campgrounds, firewood processing, farming, horse boarding, construction companies, carpet cleaning, etc. My business is a very low-profile business.
- b. Bi-weekly my dumpster gets emptied and during the week I have less than 10 customers/ deliveries per day.
- c. My project will not require a substantially greater degree of municipal services than the surrounding businesses.

Motion made by Marc Derr: The applicant has satisfied a reasonable burden of proof of compliance with the criterion for public safety impacts. **Motion seconded by Brian Lanoie:**
Votes to approve: 5 Votes to deny: 0

- 4. **Environmental Impacts:** The proposed use will not result in sedimentation or erosion or have an adverse effect on water supplies.

Findings:

- a. I do plan on removing trees for this project.
- b. There is also a natural swale where the water gathers & leaves my property and enters my neighbor's pond.
- c. I plan to control flow through crushed stone, bark mulch & grass around the whole project.
- d. All my work will be conducted indoors, all my automotive fluids will be contained and stored properly until disposed of.
- e. The property will always be clean, organized & well maintained.

Motion made by John Talbot: The applicant has satisfied a reasonable burden of proof of compliance with the criterion for environmental impacts. **Motion seconded by Allan Purinton:**
Votes to approve: 5 Votes to deny: 0

- 5. **Scale & Intensity of Use:** The proposed use will be compatible with existing uses in the neighborhood, with respect to physical size, visual impact, intensity of use, and proximity to other structures.

Findings:

- a. There are several local businesses around me. Logging, excavation, campgrounds, firewood processing, farming, horse boarding, construction companies, carpet cleaning, etc.
- b. This project will be nonvisible to any of them.
- c. As far as my neighbors go this project will be tucked back in the woods and I will be leaving enough vegetation with my backs which will leave a heavy wooded surrounding. When the project is completed, I will then be doing landscaping to help as well.

Motion made by Allan Purinton: The applicant has satisfied a reasonable burden of proof of compliance with the criterion for scale and intensity of use. **Motion seconded by Juliet Capliner:**
Votes to approve: 5 Votes to deny: 0

6. **Noise & Hours of Operation:** The proposed use will be compatible with existing uses in the neighborhood, with respect to the generation of noise and hours of operation.

Findings:

- a. I am open Monday- Friday 8am-5pm.
- b. All work will be conducted indoors so noise will be very minimal.

Motion made by Juliet Caplinger: The applicant has satisfied a reasonable burden of proof of compliance with the criterion for noise & hours of operation. **Motion seconded by Brian Lanoie:**
Votes to approve: 5 Votes to deny: 0

7. **Right, Title, or Interest:** The applicant has sufficient right, title or interest in the site of the proposed use to be able to carry out the proposed use.

Findings:

- a. The applicant submitted a warranty deed documenting ownership of the property.

Motion made by Allan Purinton: The applicant has satisfied a reasonable burden of proof of compliance with the criterion for right, title, or interest. **Motion seconded by Marc Derr:**
Votes to approve: 5 Votes to deny: 0

8. **Financial & Technical Ability:** The applicant has the financial and technical ability to meet the standards of this Section and to comply with any conditions imposed by the Planning Board pursuant to subsection 7.5.

Findings:

- a. Estimated project cost for just the building is \$150,000.
- b. I went to school to learn auto mechanics on automobiles & heavy trucks.
- c. I was an engineer in the oil field for 20 years as well & in my off time running my little business fixing cars.
- d. Total project cost will be submitted at site plan review with financing proposed.

Motion made by Allan Purinton: The applicant has satisfied a reasonable burden of proof of compliance for a criterion for financial and technical ability. **Motion seconded by Brian Lanoie:**
Votes to approve: 5 Votes to deny: 0

Section 7.5 CONDITIONS OF APPROVAL

- A. **Planning Board Approval Conditions:** Upon consideration of the criteria listed in subsection 7.4, the Planning Board may by majority vote attach such conditions, in addition to those required by other provisions of this Ordinance, as it finds necessary to ensure compliance with those criteria and all other applicable requirements of this Ordinance. Violation of any of those conditions shall be a violation of this Ordinance.

Motion made by John Talbot: To apply the following conditions of approval to the permit for conditional use. **Motion seconded by Allan Purinton:**

Votes to approve: 5
Votes to deny: 0

1. The project is to be constructed in accordance with the plans, maps, diagrams, specifications, textual submissions, and testimony presented by the applicant and approved by the Board.
2. Waste Storage & Disposal details per Section 5.26 to be included on the Site Plan.
3. Site distances on Route 136 will be on the Site Plan.
4. Drainage details to be provided at the Site Plan Review.
5. Total cost of the project with financing at Site Plan Review.
6. No more than 3 vehicles involved in the repair business to be stored on site (outside the building).

PLANNING BOARD DECISION

Motion made by John Talbot: The Planning Board grants conditional use approval of the automotive repair business at 1586 Royalsborough Road, Map 1, Lot 56. **Motion seconded by Allan Purinton:**
Votes to approve: 5 Votes to deny: 0

6. New Business (continued)

c.) Completeness Review Ferry Ridge Preliminary Subdivision Plan Application on Newell Brook Road, Map 6, Lot 49

Guest(s) – Dave Brackett (31 Oak Fell Lane), Bill Gerrish (Northeast Civil Solutions) and Connor Bourassa (Northeast Civil Solutions).

- The applicant is requesting preliminary plan approval of a seven-lot subdivision on Oak Fell Lane and Newell Brook Road.
- The Planning Board conducted a sketch plan review and site walk for the project in October of this year.
- The applicant did not address the submission requirement of Section 6.7.C..26 for review of potential historic and archeological resources on the project site, but this can be addressed as a condition of preliminary approval and final plan submission requirement as noted in the draft complete letter.
- The Board should decide whether to conduct a public hearing on the preliminary plan application.
- The Board can do a general review of the subdivision criteria and standards prior to the public hearing and then incorporate public comment into the findings of fact that will be prepared at final approval.

Motion made by Allan Purinton: To approve the completeness review. **Motion seconded by Juliet Caplinger:**
Votes to approve: 5 Votes to deny: 0

- The applicant is requesting a waiver from the requirements of Section 6.18.D and Appendix 1 to allow the access road to remain gravel. Under the Ordinance, any subdivision road serving more than 3 homes is required to be paved (Appendix, Section 1.1.C), but any performance standard of the Ordinance can be waived by the Planning Board subject to the criteria of Section 6. 35.

- In deciding whether to grant a waiver of the paving requirement, the Board may want to request input from the Town’s consulting engineer, Gorrill-Palmer Associates on whether a gravel road will be more susceptible to erosion and degradation, particularly for the section that accesses the ridge at an 8 percent grade. The Board could make a decision on the waiver request at final plan stage pending input from the engineer during peer review of the final plan submission. A cluster design for the subdivision would be an available alternative to reduce road construction and maintenance costs.
- Before the Board considers whether to grant a waiver on the second request of the applicant related to a stormwater management plan, the Board may again want input from Gorrill-Palmer. Although the design will be within the percentage limit of 5 percent of the subdivision’s land area, that is primarily because of its 64-acre size. Also, if the applicant creates 5 acres or more of disturbed area, a Maine DEP stormwater permit will be required. Disturbed areas would include cleared areas within the road right of way and on each home site. The composite cleared areas shown on the subdivision plat (Sheet 1 of 1) appear to be in the range of 6 to 7 acres. If the Board requires a paved road, the 1-acre DEP threshold for stormwater management based on impervious surfaces will also be exceeded.

Motion made by Brian Lanoie: To approve the stormwater waiver. **Motion seconded by Allan Purinton:**
Votes to approve: 5 Votes to deny: 0

Motion made by John Talbot: To deny the waiver request to allow the access road to remain gravel. **Motion seconded by Allan Purinton: Motion carried 4 – 1.**

7. Other Business:

a.) Planning Board Discussion of Land Use Policy Issues for Next Town Meeting

b.) Set Special Meeting Dates for December 11 & January 8

- December 11, 2024 – Fire Station, 6:30 pm
Note: Meeting was postponed until January 8th, due to inclement weather.
- January 8, 2025 – Fire Station, 6:30 pm (Regular Planning Board meeting and BESS Workshop with Town Attorney).

c.) Brian Lanoie asked for and received an update on the CEO report and investigation of the complaint on Granite Hill Farm Road and the road status.

8. Adjourn

Motion made by Allan Purinton: To adjourn the meeting. **Motion seconded by Juliet Caplinger: Motion carried 5 – 0. Meeting adjourned at 9:32 pm.**