

DEERFIELD PLANNING BOARD
DEERFIELD, NEW HAMPSHIRE
NOVEMBER 16, 2016

MINUTES OF MEETING

PRESENT; Board members Peter Schibbelhute, Kate Hartnett, William Perron, David Doran. Also present Planning Consultant Gerald Coogan and secretary Jane Boucher.

7PM: Chair Peter Schibbelhute called the meeting to order.

APPROVAL OF MANIFEST

William Perron moved to approve the manifest in the amount of \$38.38. David Doran seconded. (Upton & Hatfield \$38.38). Voted in favor.

PROPOSED AMENDMENTS TO ZONING ORDINANCE

Gerald Coogan provided information regarding Accessory Dwelling Units (ADUs).

Mr. Coogan submitted the following definition as prepared by NHMA

"Accessory Dwelling Unit. An " accessory dwelling unit" (ADU) is a residential living unit that is within or attached to a single family dwelling, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies. A copy of the NHMA Draft is attached to these minutes.

Mr. Coogan explained that this was a State mandate (RSA 674:71) effective June 1, 2017.

Board members agreed that the ADUs can be attached or detached and cannot be restricted to family members.

7:15PM APPLICATION FOR PUBLIC HEARING; LOT LINE ADJUSTMENT;
RUSSELL AND COLEEN KAATZ; MOUNT DELIGHT ROAD
Randy Orvis was present along with abutter Tom Dunnigan.

Chair Schibbelhute read the Notice of Public Hearing by which Russell and Coleen Kaatz, 159 Mount Delight Road have submitted and application for a Lot Line Adjustment for Property identified as Tax Map 411 Lots 41 and 41.1 and owned by the applicants. The intent of the application is to convey 16.40 acres from Map 411 Lot 41 to Map 411 Lot 41.1 and to depict an access easement across Lot 41.1 for the benefit of Lot 41.3, which is also owned by the applicants.

William Perron moved to accept the application. David Doran seconded. Voted in favor.

Gerald Coogan provided a memo outlining the application. The memo indicates that after the Lot Line Adjustment Lot 41 would consist of 3.08 acres and Lot 41.1 would consist of 19.54 acres.

Mr. Orvis provided plans depicting the proposal. He noted that Lot 41.3 has 10 acres. In his memo Gerald Coogan noted that "Existing Lot 41.2 lacks legal frontage and currently has no access easement. The lot is an existing lot of record that was erroneously and involuntarily merged with another of the property owners lots by the Town of Deerfield. Mr. and Mrs. Kaatz addressed this issue with the Board of Selectmen earlier this year, and the lot was restored to its pre-merger status as an existing lot of record. The parcel was unmerged in May, 2016."

Mr. Orvis explained that the access easement would cut across Lot 41-1 and be 50 feet wide.

Peter Schibbelhute noted that if someone want to build on Lot 41.3 they would have to bring the access up to standards.

William Perron said in order to build on the lot, frontage on a road is required.

Mr. Orvis noted that Lot 41-3 was an existing lot.

Gerald Coogan noted that 674:41 was a state mandate for road frontage and supercedes local zoning.

Peter Schibbelhute re-iterated that the road could only be used to access the lot. The Building Inspector could not issue a permit

William Perron said perhaps a condition could be placed that if someone wants to build on the lot the access would have to be upgraded.

Peter Schibbelhute said that by granting a right of way to the lot would not allow someone to build on it. Kate Hartnett disagreed and said that according to 674:41 it would be a "street", not a "right of way".

William Perron said that by adding a stipulation that the lot is not buildable until the access is upgraded would be a solution.

David Doran agreed with Mr. Perron.

Kate Hartnett did not agree noting that, as a Planning Board,

we have responsibility to plan ahead.

David Doran said there could be a note on the plan indicating that if anyone wanted to build on the lot, they would have to upgrade the access road to Town standards.

Kate Hartnett said that someone could say they never saw the plan. She referred to Cottonwood Estates and the numerous issues with that development because people were not aware that it was an Open Space Development.

Randy Orvis said that they would have a deeded easement for the access and a note can be added to the plan.

William Perron said that they are not creating a new lot , they are accessing an existing lot.

Kate Hartnett said that you can have a land locked lot and the Select Board , under State law, can lay out an access but there is no guaranteed right to build on a land locked lot.

Mr. Orvis said that setting monuments can be a condition of approval.

Tom Dunnigan, an abutter, questioned if it wouldn't make more sense to write a deeded easement at the time of sale of the lot. He also questioned the fact that the owners may want to subdivide the lot.

Peter Schibbelhute said that ,if they wish to subdivide Lot 41-3, they would have to come to the Planning Board for approval.

Kate Hartnett said she is looking at the future and where the road would be if owners of Lot 41-1 wished to subdivide in the future.

David Doran said that looking into the future is not the job of the Planning Board. He said that the current owner of Lot 41-1 and Lot 41-3 want to provide access to Lot 41-3.

Gerald Coogan suggested that a condition be put on the plan stating that "No Building Permit to be issued until the roadway is brought up to Town standards and approved by the Town Engineer".

Kate Hartnett said that she felt the Board does not have the experience or knowledge to make a decision on this and moved that both Town Counsel and Fred McGarry be asked for their opinion before granting approval for this application. William

PLANNING BOARD 11/16/16

Perron seconded. Voted in favor.

Kate Hartnett moved to continue the Public Hearing to January 11, 2017 at 7:15PM. William Perron seconded. Voted in favor.

PROPOSED ZONING AMENDMENTS

Accessory Dwelling Units

The amount of square feet in an ADU can fall in a range of between 300 sf and 1,000 sf. It was agreed to increase the square feet to 750 sf and up to 35% of the primary dwelling.

Gerald Coogan said that Fred McGarry would like to see the ADUs added as a new provision in Article III General Provisions. The current definition will be omitted.

The Board referred to the draft prepared by NHMA and agreed to include detached dwellings and also parking must be available on the premises.

Gerald Coogan noted that there is still a bit of confusion regarding the Smith Ordinance. He referred to his memo of November 14 and recommended changes. A copy is attached to these minutes. He felt the current ordinance was not clear.

It was agreed to keep the current ordinance regarding the Smith Road Ordinance as is and add a statement indicating the "intent" of the ordinance.

Public hearings will be held on December 14, 2016 at 7PM and , if necessary, a second public hearing will be held on January 11, 2017 at 7:30PM.

The meeting was adjourned at 9:15PM.

Recorded and transcribed by Jane Boucher
Pending Approval by the Planning Board

DRAFT ADU – Prepared by the NHMA

Article __ . Accessory Dwelling Units

Section 1. Definitions: As used in this article, the following term shall have the meaning indicated:

Accessory Dwelling Unit. An "accessory dwelling unit" (ADU) is a residential living unit that is within or attached to a single-family dwelling, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies.

Section 2. Provisions.

An attached accessory dwelling unit shall be permitted in all zoning districts that permit single family dwellings, subject to the following:

- A. Only one (1) ADU shall be permitted for each single-family dwelling.
- B. The ADU must provide independent living facilities for one or more persons containing the four elements of sleeping, eating, cooking, and sanitation.
- C. The ADU shall have an independent means of ingress and egress, or shall have ingress and egress through a common space such as a shared hallway to an exterior door.
- D. The ADU shall be attached to the principal dwelling unit. In order to be considered an attached ADU there must be a common wall between the principal dwelling unit and the ADU. Detached accessory dwelling units are prohibited.
- E. Either the ADU or the principal dwelling unit shall be the principal residence and legal domicile of the owner of the property.
- F. The ADU shall not exceed 750 square feet in habitable floor area.
- G. An ADU shall be provided a minimum of two (2) off-street parking spaces.
- H. An ADU shall make provision for adequate water supply and sewage disposal service in compliance with RSA 485-A:38 and regulations adopted by the New Hampshire Department of Environmental Services.

Section 3. Minimum Lot Dimension Requirements: An attached ADU shall not be required to meet additional lot area requirements other than already provided for the principal dwelling unit. An ADU shall comply with all lot setback requirements.

**Prepared by Legal Services Department, New Hampshire Municipal Association,
September, 2016**

Memorandum

X

November 14, 2016

TO: Deerfield Planning Board
FR: Gerald Coogan, AICP
RE: Proposed 2017 zoning amendments

I will meet with the Board on Wednesday November 16th to review potential 2017 zoning amendment. At present, there are two proposed amendments under discussion.

Accessory Dwelling Unit:

This is a new state requirement that allows the owner of a single family dwelling to add an accessory dwelling unit (ADU). NH municipalities must allow an owner to add an ADU and the owner needs to live in the principal dwelling unit or in the ADU. The ADU legislation:

- Requires all municipalities to allow an attached ADU in any single-family house by right, special exception, or conditional use permit;
- ADU needs to be “secondary and subordinate to” the Single Family; therefore, an ADU **cannot** be a Two Family unit;
- ADU must be an independent dwelling unit that provides for sleeping, cooking, eating and sanitation;
- Standards for a single-family home also apply to combined SF and ADU (lot coverage, off-street parking, occupancy per bedroom)
- Municipality **may**:
 - Require owner occupancy of one of the units;
 - Control for architectural appearance; and
 - Establish minimum and maximum size of the unit
- Municipality **may not**:
 - Require ADUs to have 1 bedroom;
 - Be less than 750 SF;
 - Require familial relationship of the occupants in each unit; and
 - Require additional lot area or other dimensional standards for ADU

At Present, the Deerfield Zoning Ordinance (DZO) has the following definition: “**Accessory Apartment-** A dwelling unit, either attached to or independent of the primary dwelling and is incidental and subordinate to the said primary dwelling unit. The accessory apartment can have up to 35% of the primary dwelling unit living space but, in no case, shall it have more than 750 square feet.” The new state law says the ADU should be a minimum of 750 feet and the above language may not be sufficient.

The Planning Board has a few options regarding this provision such as:

1. Use state definition as a start: The new definition could be: An Accessory Dwelling Unit (ADU) means a residential living unit that is within or attached to a single-family dwelling, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies. It shall be no larger than _____ square feet and cannot be converted to a condominium unit.
2. Use an existing model ADU ordinance: I have enclosed two options: one prepared by the Rockingham Planning Commission and the other by the NH Municipal Association.

DZO Section 207 1 B (aka "Smith Road") provision

Handling a "Smith Road Ordinance" subdivision has been vexing for the Board. A "Smith Road" subdivision is a relaxation of the existing standards for a proposed subdivision and a deviation from accepted practices. The existing language in DZO Section 207 1 B. could be a clearer. Atty. Raymond and I worked on the following in November 2015.

Proposed change to DZO Section 207.1 B (aka "Smith Ordinance):

207.1 Minimum Frontage

- A. Frontage - Every building lot shall have a minimum frontage as specified in Section 204 provided that where lots are located on the exterior of a curving street, a shorter front dimension may be permitted provided that the width of the lot measured along the front setback line shall be the minimum specified in Section 204.
- B. In the alternative, provided all requirements for lot dimensions of this Ordinance can be met, up to four (4) single family dwellings may be constructed on lots which front on a private way. Add road.

If, in the opinion of the Planning Board, considering the topography and land ownership in the vicinity, it is likely that the road way could be extended to serve additional dwelling units in the future, the layout of said road way shall be done in such a fashion that all of the geometric layout specifications of the subdivision regulations for a public street could be met.

If the road way is unlikely to serve more than four (4) dwelling units, it shall be constructed in a manner consistent with the following: ~~minimum specifications:~~

1. The ~~right-of-way~~ road shall be designed in a manner consistent with RSA 674:41 I and III, Section IV - 4 and Table IV-1 in the Town of Deerfield's Subdivision Regulations. For good reason the Planning Board will ~~may~~ consider a waiver request(s) for road construction to a lesser standard provided the resulting standard does not represent a departure from applicable State Building Code or State Fire Code requirement; ~~at least 50 feet in width to accommodate upgrading of the road should future owners choose to dedicate it to the Town;~~

- ~~2. The roadway specifications shall be graduated based upon standard traffic calculations (e.g. a private way for one dwelling unit generates 10.1 vehicles per day and thus would require a 12-foot wide gravel way);~~
3. The way road shall provide adequate access to each lot served by the same in a manner consistent with State Building Code and State Fire Code Requirements;
4. Both the road way and the arrangements for paying the costs of maintenance and repair of said road way, as well as provisions for turning over said road way to the Town as a public street should the Town so request, shall be described in instruments referred to in said deeds.
- ~~5. The applicant shall provide the Planning Board with a nonbinding conceptual plan of the parcel. This plan would show the parcel as it would appear if built out to the maximum number of lots allowed by current zoning and would show how such growth could be accommodated.~~

Sign Regulations:

A 2015 U.S. Supreme Court decision (Reed v. Town of Gilbert, AZ) has caused municipalities to review and modify their existing sign regulations. Attached is information on the case provided by the NHMA.

After the discussion of the proposed zoning amendments on November 16th, we forward them to Atty. Raymond for his comments and schedule the 1st public hearing on Wednesday December 14th.

Cc: Atty. James Raymond
Steve Keach, P.E.