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Planning - Zoning - Economic Development - Conservation

MEMORANDUM

Date: June 2, 2016

To: Robert Best, Chairman, & Members, Planning Board

From: Timothy J. Thompson, AICP, Community Development Director

Subject: **Chad E. Branon, P.E. of Fieldstone Land Consultants for Red Oak Property Management, Inc. (applicant) and Turkey Hill Road 136 Trust (owner) –** Review for acceptance and consideration of Final Approval for a subdivision of one lot into two lots. The parcel is located at 136 Turkey Hill Road in the R (Residential) and Aquifer Conservation Districts. Tax Map 4C, Lot 386.

Background:

The subject property comprises approximately 31.6 acres located at 136 Turkey Hill Road in the R (Residential) and Aquifer Conservation Districts, and the 3 existing non-conforming apartment buildings on the site are serviced by municipal water and sewer. Abutting land is a mix of single-family residential and condominium development (Olympic Village and The Birches).

This property has a relatively lengthy and contentious history, with most recent activity related to an attempt in the late 2000's to construct a 4th apartment building on the lot, which was denied by administrative decision, which was appealed to the ZBA (upholding the administrative decision), and eventually to Superior Court, where the Town was successful in the position that the property did not have vested development rights to allow for the 4th apartment building. At the time the original buildings were granted building permits, multi-family residential was permitted in the zone, as long as there was 40,000 square feet of lot area for each unit. The Zoning has subsequently changed, and multi-family is no longer allowed in this district west of the Everett Turnpike. As such, the 3 apartment buildings (comprising 18 total units) is a pre-existing non-conforming use of the property.

The proposal before the Board calls for a 2 lot minor subdivision, with the 3 non-conforming apartment buildings to remain on one lot, and a new lot to be created for the development of a new single-family dwelling (which would be served by MVD water, and private septic, as the proposed house location is beyond the Town's 200' from sewerline requirement to connect).

Staff does have 2 significant concerns with the application as it is currently configured and prepared. I have summarized them as follows:

- **Lot size for the lot to contain the apartment buildings**: As mentioned above, at the time the apartments were permitted, the Zoning Ordinance required that 40,000 square feet of lot area be provided for each unit, which for the 18 units existing would calculate to 720,000 square feet. While the lot as it exists today has sufficient lot area to meet this former requirement, the proposed subdivision only provides for 650,392 square feet on the lot containing the apartments. Staff has determined that in order for these non-conforming apartments to remain in legal non-conforming status, the lot must meet the requirements in place at the time they were permitted, which of course means that at least 720,000 square feet of lot area needs

to remain with the apartments. The applicant's engineer has been made aware of this issue, and states that the lots can be reconfigured to meet this requirement.

- **Boundary Survey and Existing Conditions**: The proposed subdivision plans as submitted by the applicant, are not based on a current boundary survey, nor has any new survey been done to verify existing conditions within the property. Notes 9-12 on the plan indicate that the boundary information and other information shown on the plans are not as a result of any survey work done by the applicant's design firm, but rather are based on reference plans from several years ago (the exact date is uncertain given the confusing and nonsensical dates referenced in the note for Reference Plan #1, indicating the plan is from 2013, but last revised in 1987). Further, none of the referenced plans have been recorded at the Hillsborough County Registry of Deeds, making verification of the referenced plans even more difficult.

  Section 4.06.1.a of the regulations states "The subdivision plat shall be **based on a boundary survey** …" [emphasis added]. It is staff's position that absent a current boundary survey and delineation of wetlands, existing conditions, etc, the Planning Board cannot even accept the application as complete, because the stamp of the land surveyor on the plans does nothing except state that the boundary "is mathematically correct." Given the environmental constraints and complicated history of this parcel, staff believes it is especially important for the information to be up to date, correct, and compliant with the basic requirements of any subdivision. ***Staff would strongly oppose any attempt to obtain a waiver for the boundary survey***.

Completeness

Staff believes the application is incomplete at this time, due to the lack of current survey information as described above.

Should the Board agree with Staff, and believe that the application is not complete, staff recommends that the Applicant be given an opportunity to continue the project to a future date certain prior to the Board formally determining the application to be incomplete *(particularly given the extraordinary number of abutter notifications for this project due to the abutting common lands of condominium developments, Staff would rather not have to require the applicant to pay for a new application and abutter fees).*

Waivers

Because Staff does not believe the application is complete, it is not likely that the issue of waivers will come up at the hearing on 6/7. In the event that somehow the application is accepted as complete, no waivers have been requested by the applicant. Given the way the plans were prepared, if the application is determined complete, several waivers would likely be required to move forward. Staff recommends any waivers *be submitted in writing* for the Board's consideration, or a determination under Section 4.07 that such waivers are not necessary.

Staff recommends that the Board delay voting with respect to any requested waivers until Staff has an opportunity to review them and prepare appropriate recommendations in accordance with RSA 674:36:

- Strict conformity would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations; **or**

- Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations.

Recommendation

Based on the information available to date, **staff recommends that the Board CONTINUE the application to a date certain (which should be discussed with the applicant, so that sufficient time is allowed for the development of survey data should the Board agree with the staff recommendation on completeness).**

In an effort to assist the applicant with revisions, the following comments are offered at this time, based on the plans that Staff considers to be incomplete (staff reserves the right to make additional comment and solicit additional comments from other departments/boards/committees upon receipt of revised plans/information):

1. Final plans and mylars to be signed by all property owners. The appropriate professional endorsements and signatures shall also be added to the final plans and mylars;

2. The applicant shall obtain all required State approvals/permits (*as may be applicable*), note the approvals/permits on the final plans and mylars and provide copies to the Community Development Department;

3. The applicant shall note all waivers granted by the Board on the final plans and mylars (including Section, and date granted) as applicable;

4. The applicant shall provide draft copies of any applicable legal documents for review, at the applicant's expense, by the Town's Legal Counsel;

5. The applicant shall address any forthcoming comments from the Building Department, as applicable;

6. The applicant shall address the following comments from the Fire Department, as applicable:

    a. The construction of all roads and access ways must be completed to the Town of Merrimack Specifications allowing access and supporting the weight of fire and emergency medical apparatus throughout the construction period. Due to the length of the new proposed driveway on lot 4C-386-1 which is over 300 feet in length, it must also meet the above standard, as well as maintaining a minimum clear width of 16 feet throughout its length and having an acceptable Fire Apparatus Turn around area at the far end of the driveway. (NFPA 1, Chapter 18);

    b. The new lot created by this subdivision shall have the following addresses assigned: Lot 4C-386-1 shall be # 134 Turkey Hill Road

7. The applicant shall address the following comments from the Public Works Department:

    a. A note should be added indicating any work within the public right of way requires a permit from the Highway Division of Public Works;

    b. The driveway apron is to be paved from the connection at Turkey Hill road to the property line;

c. The property line offset from the centerline of Turkey Hill Road should be examined by the designer to confirm that there is at least 25' from CL to property line; should that distance not exist, a ROW easement or dedication to the town should be granted;

d. Property bounds should be found or set (concrete/granite bounds) at all locations specified in the subdivision regulations along the Turkey Hill Road frontage;

8. The applicant shall address any forthcoming comments from the Conservation Commission, as applicable;

9. The applicant shall address any forthcoming comments from the Merrimack Village District, as applicable;

10. The applicant shall address any forthcoming comments from the Police Department, as applicable;

11. The applicant shall address the following Planning Staff Technical Comments:

    a. Applicant to provide up-to-date boundary and existing conditions survey as required by the regulations;
    b. Applicant to revise the plans to reconfigure the lots such that at least 720,000 square feet is provided for the multi-family lot, or a variance will be needed to allow for the multi-family units to be permitted on a lot that no longer would comply with the standards that were in place at the time in order to maintain legal non-conforming status;
    c. The plans do not indicate the full right-of-way for Turkey Hill Road. This should be provided on the plans;
    d. There are several missing monuments at lot corners and angle points on the plan. The applicant shall provide appropriate monumentation as required by the regulations (staff would support limited waivers of this requirement where lot corners are within wetlands as long as the wetlands and boundary are updated by current survey information);
    e. The applicant should provide appropriate details for water connection to the lot per the typical requirements of MVD and revise note #12 referencing Pennichuck Water Works;
    f. Portions of the proposed driveway encroach within the wetland buffer (at least it appears to be such, it is impossible to know the precise location of the buffer boundaries without current survey information, as the plan notes only indicate that the wetlands were verified from the reference plan). The Planning Board and Conservation Commission should consider this as part of their review of the subdivision;
    g. Because the property is in the Aquifer Conservation District, the Conservation Commission must provide recommendations to the Planning Board per the requirements of the Zoning Ordinance;

12. The applicant is responsible for recording the plan (including recording fee and the $25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) at the Hillsborough County Registry of Deeds. The applicant is also responsible for providing proof of said recording(s) to the Community Development Department (this would be a General & Subsequent Condition at the time of conditional approval);

13. Any proposed easements and/or applicable legal documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant (this would be a General & Subsequent Condition at the time of conditional approval);

14. The applicant shall obtain right-of-way permits from the Public Works Department (Highway Division) for the proposed new driveway (this would be a General & Subsequent Condition at the time of conditional approval).

Ec: Turkey Hill Road 136 Trust, Owner
Red Oak Property Management, Inc., Applicant
Chad Branon, Fieldstone Land Consultants
Building Department Staff
John Manuele, Captain, Merrimack Fire Department
Assessing Department Staff

Cc: Planning Board File
Correspondence