

Approved

**PLANNING BOARD
PLANNING BOARD MEETING & PUBLIC HEARING**

Wednesday, October 11, 2023 – 6:00 PM

***Lincoln Town Hall, 148 Main Street, Lincoln NH**

*Hybrid meeting available both in person & via Zoom Meeting Platform to allow for town wide participation. A quorum of Planning Board members must be physically present at the meeting. Although there is space in the large conference room for 8-12 guests in addition to the Board members, the public is welcome to participate remotely using ZOOM. Planning Board Meetings can be attended in-person at the Town Hall Building. Recordings of all Planning Board meetings can be found at www.youtube.com (Lincoln NH Planning Board Meeting 10-11-2023). Zoom access is for your convenience; use at your own risk. If any technical difficulties or if ZOOM should go down, the meeting will NOT be rescheduled.

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(See also town website www.lincolnnh.org for same link, meeting ID and passcode.)

I. CALL TO ORDER by Chair James Spanos;

II. Planning Board Members Present: Chair James Spanos, Vice-Chair Joseph Chenard, Selectmen's Representative OJ Robinson, Member Stephen Noseworthy, Member Paul Beaudin (arrived later), Alternate Danielle Black

Planning Board Members Excused: Alternate Mark Ehrman, Member Paul Beaudin (arrived later).

Staff Present: Planner Carole Bont

Consultant: None

Guests Present:

- **Delia M. Sullivan**, resident (APPLICANT) of 13 Coolidge Street, Lincoln, NH 03251:
 - Delia M. Sullivan, Trustee of Delia M. Sullivan 2016 Revocable Trust of property, 13 Coolidge Street, Lincoln, NH 03251, owner of 13 Coolidge Street, (Tax Map 117, Lot 133001-00-0000); and
 - Delia M. Sullivan d/b/a D & K Properties, LLC, 13 Coolidge Street, Lincoln, NH 03251, owner of 47 School Street (Map 113, Lot 112).
 - Also, member of the Zoning Board of Adjustment.

II. CONSIDERATION of meeting minutes from:

- **September 27, 2023 (Wednesday)**

- Chairman James Spanos, Vice Chairman Joe Chenard, Selectmen's Representative OJ Robinson, Member Stephen Noseworthy, Member Paul Beaudin.

Minutes were unavailable at the time of the meeting.

Motion to pass over minutes, seconded. All in favor

III. 6:00 PM CONTINUING AND OTHER BUSINESS (Staff and Planning Board Member/Alternates).

A. ANDREW (DREW) GODDARD d/b/a Copley Loon Housing, LLC:

Copley Loon Housing LLC, seeking a **Voluntary Lot Merger** as part of the proposal presented on September 13, 2023, that received Site Plan Review approval to create a mixed-use commercial space mixed with Restricted Multi-Family Residential Housing apartment units.

- a. **Applicant/Property Owner:** Andrew (Drew) Goddard
d/b/a Copley Loon Housing, LLC
94 Portsmouth Avenue
Stratham, NH 03885
- b. **Former Property Owner:** Gregory (Greg) Nash
d/b/a The Millry Group, LLC
24 Winter Street
Plymouth, NH 03264
- c. **Engineer:** Stephen Haight PE,
CivilWorks New England (CNE)
181 Watson Road
PO Box 1166
Dover, NH 03821-1166
- d. **Land Surveyor:** McEneaney Survey Associates of New England
24 Chestnut Street
Dover, NH 03820
- e. **Architect:** Art Form Architecture, Inc.
44 Lafayette Road
PO Box 535
North Hampton, NH 03862

Subject Properties: All 3 adjacent Subject Properties located in the **Village Center (VC) District** where maximum lot coverage is 70%, front setback is five feet (5'); rear setback is fifteen feet (15') and side setback are ten feet (10'). Mixed Multifamily Residential/Retail Customer Service Business Uses are permitted uses within the VC District.

- 1. **139 Main Street (Map 118, Lot 050) (0.16 Acres)**
- 2. **141 Main Street (Map 118, Lot 051) (0.32 Acres)**
- 3. **Church Street #LO (Map 118, Lot 052) (0.12 Acres)**

Proposal: Request for approval of Request for Voluntary Lot Merger to merge all three (3) adjacent lots to create one (1) larger lot with a total of 26,415 SF or 0.61 Acres.

Discussion:

Chair Spanos reviews the request for the Voluntary Merger of three (3) lots. He says the Planning Board *shall* approve the request for a Voluntary Lot Merger as long as it doesn't create a nonconforming lot. Chair Spanos asks if there are any questions. No public comment is needed on this.

NH RSA 674:39-a Voluntary Merger. – Any owner of 2 or more contiguous preexisting approved or subdivided lots or parcels who wishes to merge them for municipal regulation and taxation purposes may do so by applying to the planning board or its designee. Except where such merger would create a violation of then-current ordinances or regulations, all such requests shall be approved, and no public hearing or notice shall be required. No new survey plat need be recorded, but a notice of the merger, sufficient to identify the relevant parcels and endorsed in writing by the planning board or its designee, shall be filed for recording in the registry of deeds, and a copy mailed to the municipality's assessing officials. No such merged parcel shall thereafter be separately transferred without subdivision approval. No city, town, county, or village district may merge preexisting subdivided lots or parcels except upon the consent of the owner.

Chair Spanos makes a motion to approve the lot merger.

Vice Chair Chenard seconds. All in favor. None opposed.

IV. NEW BUSINESS

A. Conceptual – CON 2023-14 M113 L112 D & K Properties

Delia Sullivan & Kevin Sullivan d/b/a D & K Properties, LLC, own 47 School Street (Map 113, Lot 112). On the front portion of the lot is a four (4) bedroom, two (2) full bathroom, single-family home. The lot is separated in two by Henry Lane (an alley). On the other side of Henry Lane in the back of the lot is a detached garage (384 SF). Owners would like to remove the detached garage, located on the other side of Henry Lane than the house, and replace it with a new detached garage with a detached accessory apartment above the garage. Access is an issue as Henry Lane is not a Class V Road or even clearly a Class VI Road; Henry Lane is back alley, with a special legal history. It is minimally plowed by Town. Other than snowplowing, the Town does not maintain Henry Lane.

1. **Property Owners:** **Delia Sullivan d/b/a D & K Properties, LLC**
PO Box 665
Lincoln, NH 03785-0665
2. **Subject Parcel:** **47 School Street (Map 113 Lot 112) (0.31 Acres)**
 - a. The subject lot is divided by Henry Lane (an alley). The subject lot supports a single-family residence on one side of Henry Lane and a garage on the other side of Henry Lane.
 - b. The subject lot is located in the Village Residential (VR) District where the setbacks are:
 - fifteen feet (15') from the front property boundary line
 - ten feet (10') from the side property boundary lines; and
 - ten feet (10') from the rear property boundary line.
 - c. The front of the subject lot where the house is currently located has sixty-four feet (64') of frontage on School Street which is a Class V Road. The rear section of the lot has approximately sixty-four feet (64') of frontage on Henry Lane which is an "alley".

- d. NH RSA 674:41 forbids issuing a "Building Permit" [Land Use Authorization Permit] unless a lot has "direct access" on a Class V or better road. [Discussion about how to interpret this statute in this context.]

Presentation/Discussion:

Vice Chair Chenard gives his history of Henry Lane regarding a sewer line. (It was difficult to understand the specifics of what he was saying).

What is the Legal Status of Henry Lane?

Applicant Delia Sullivan states that she called Director of Public Works (DPW) Nate Hadaway, and he reported to her that there is a municipal water line under Henry Lane. He said the Town plows Henry Lane and the Town paves Henry Lane.

This creates a debate on who owns the street. Do the abutters own the street or does the Town own the Street? Is it a private road? What is the legal status of the street? It is not a Class V or a Class VI Road.* The municipal sewer comes from School Street.

**Note: According to DPW Nate Hadaway, the Town only has a "Maintenance Easement" per the Board of Selectmen paperwork. The property owners own the fee simple for the land underneath the street. DPW Hadaway is in charge of municipal streets as well as the municipal water and sewer systems. His department maintains the water and sewer lines and performs "only minimal maintenance" for "back alleys"; "back alleys include Henry Lane, Corbeil Lane, Govoni Lane and Nora Parent Lane. These back alleys are only as wide as a driveway of approximately eight feet (8'). They are not legal "roads" or "streets". "Minimal maintenance" includes minimal plowing and minimal paving.*

Applicant Sullivan found a map, number 269, that shows the location of the water line.

Planner Bont points out the packets she prepared for the Planning Board that are on the table in front of each member. The packets hold the relevant information about Henry Lane and other similar "Back Alleys". She asks Chair of Board of Selectmen and Selectmen's Representative OJ Robinson permission to share the packet with Applicant Delia Sullivan even though it is marked "confidential and privileged".

Selectmen's Representative OJ Robinson looks and agrees to have Planner Bont give Applicant Sullivan a copy. He says there is no reason to withhold the packet even though it says, "confidential and privileged."

What Are the Neighbors Doing?

Vice-Chair Chenard says that there is an apartment that is over the garage on the property next door to Applicant Sullivan's house. Ms. Sullivan confirms. [Property Owner was not mentioned.] Vice-Chair Chenard believes the Zoning Board of Adjustment (ZBA) has "done a case like this before". He continues that there is [a section in the zoning] ordinance that allows you to put an accessory apartment or an in-law apartment on your property.

[Vice Chair Chenard continues, but his words are not understandable to the recorder.]

Vice Chair Chenard continues that in his opinion, Applicant Sullivan couldn't do an attached accessory apartment to the house because the main house is too close to School Street on the front.

How Large Would the Detached Apartment Be?

Vice-Chair Chenard asks how many square feet the detached apartment will be? Ms. Sullivan reports she doesn't know as it depends on how large the ZBA or Planning Board will allow her to go. She will do whatever is conforming to the setbacks.

Planner Bont states that according to the Land Use Plan Ordinance, the maximum size for an accessory apartment is one thousand square feet (1,000 SF).

LAND USE PLAN ORDINANCE

ARTICLE IV

DEFINITIONS

1. **Accessory Apartment** – An accessory apartment is a separate complete housekeeping unit that is contained within, attached to a single-family dwelling, or within an accessory building, in which the title is inseparable from the primary dwelling. An accessory apartment shall have a maximum of 1,000 square feet of floor space. Also, see Section D of Article V of this Ordinance.
2. **Accessory Building** – Accessory building means a building subordinate to the main building on the lot and used for purposes customarily incidental to those of the main building.

LAND USE PLAN ORDINANCE

ARTICLE V

GENERAL REGULATIONS

Section D. ACCESSORY APARTMENTS. It is the specific intent and purpose of allowing accessory apartments in the Town of Lincoln on one-family properties to provide the opportunity and development of small rental housing units designed in particular to meet the specific housing needs of low and moderate-income couples and single persons both young and old. To help achieve this goal the following specific standards are set forth:

1. The apartment will be a complete separate housekeeping unit that can be isolated from the original unit.
2. Only one accessory apartment will be created within or attached to a single-family structure or accessory building.
3. Any accessory apartment whether an addition to or contained within the single-family structure or accessory building shall have a maximum of 1,000 square feet of floor space.
4. A Special Exception must be granted from the Zoning Board of Adjustment if an accessory apartment is proposed over 1,000 square feet.
5. All applicable regulations of the Town of Lincoln shall be met before an accessory apartment is permitted.
6. Off-street parking shall be provided in accordance with the standards set forth in Article V, Section A for Residential Uses.
7. Accessory apartments are not intended for individual ownership. The title shall be inseparable from the primary dwelling.
8. Accessory apartments may be located in a detached accessory building where allowed in the Land Use Schedule under Article VI only if the detached accessory building contains another accessory use such as a garage or storage building.
9. Accessory apartments may not be a manufactured home.

Planner Bont said an apartment above a detached garage would be considered a “Detached Accessory Apartment” that is not permitted in the Village Residential (VR) District. See the Dimensional Chart on page 32 of the Land Use Plan Ordinance.

LAND USE PLAN ORDINANCE

Section B. DISTRICT REGULATIONS.

1. LAND USE

2. LAND USE SCHEDULE

RESIDENTIAL USES, V.R. (Village Residential District)

Detached Accessory Apartments “N” (meaning “Not Permitted”.)

Applicant Sullivan advises she intends to make this apartment a long-term rental apartment, not a short-term rental like an Airbnb. Her tenant in the main house is a single mom with children.

Would Maximum Lot Coverage Restrictions Apply?

Alternate Member Black asks how much square footage Applicant Sullivan would need for an apartment. Ms. Sullivan states that “it says” that she can’t cover more than sixty percent (60%) of the lot and the size of the combined garage with apartment above that she is looking to build would not cover more than 60% of the “back lot”.

Note: The Land Use Plan Ordinance includes a 60% Maximum Lot Coverage Percentage restriction that applies to nonresidential uses only, not residential uses in the Village Residential (VR) District.

Parking Spaces Required

Alternate Member Black asks Applicant Sullivan about the number of parking spaces that she intends to include. Applicant Sullivan states she has planned for three (3) parking spaces. The garage would be a three (3) vehicle garage.

More discussion about existing number of parking spaces for the current house tenants and the requirements for future tenants of the apartment. She would need a total of four (4) parking spaces, two (2) for each of the two (2) dwelling units.

ARTICLE V

GENERAL REGULATIONS

Section A. PARKING AND OFF-STREET LOADING. Adequate off-street parking facilities (municipal parking facilities excluded) for employees as well as customers and off-street loading facilities shall be provided whenever a new use is established or any existing use is enlarged in accordance with the following specifications:

1. All proposed new construction shall provide for adequate off-street parking spaces in accordance with the following standards, subject to modification by the approval of a special exception pursuant to Article V, Section A.3. A single parking space is defined as being one hundred seventy (170) square feet in area and having additional adequate area for maneuvering.
 - a. Residential (including dwellings, timeshare units, quarter share units, accessory apartments or other similar types of occupancy as determined by the Planning Board) – two (2) spaces for each residential unit for the first three (3) bedrooms and then one additional parking space for each additional two (2) bedrooms.

Requires a Variance

Applicant Sullivan understands she will need to go to the ZBA to get a variance as she's not sure if it's actually permitted to have the apartment above the garage. Planner Bont affirms that detached accessory apartments are not permitted in the Village Residential (VR) District, therefore, Applicant Sullivan would have to ask the ZBA for a variance.

Henry Lane is Not a Class V or Better Road

Applicant Sullivan asks the Planning Board what other things she would need a variance for.

Chair Spanos advises Applicant Sullivan that the biggest issue for the Planning Board is whether or not to allow the building of a dwelling unit on a road that does not have direct access to a Class V or better road.

Planner Bont reports there are other lots that are like Applicant Sullivan's lot on Henry Road and the other "back alleys" in the more densely-packed parts of downtown that have two separate tracts – a larger tract in front intended for a house and a smaller tract in back that was created to be a "garden lot" for the small homes constructed by the paper mill for its employees as "temporary housing".

Applicant Sullivan reassures the Planning Board she is not asking to divide the land into two (2) separate tracts.

Chair Spanos reiterates this hearing is more than just about whether Applicant Sullivan can get a variance and then a land use permit. The issue for the Planning Board is whether they want to allow dwelling units with their only access being over an eight-foot (8') wide back alley to take precedence over a variance.

Selectmen's Representative OJ Robinson brings up the fact that Henry Lane is only eight feet (8') feet wide and not really a road and states that it is only an "8-foot right-of-way." He continues regarding the applicable State laws and the requirement for frontage on a Class V or better road. Since Henry Lane has been not been considered a Class VI highway and the Board of Selectmen has not voted on whether they would grant building permits on Henry Lane (or any other lane that is a "back alley"), his concern is being able to designate between short term and long-term rentals with current zoning.

Note: The "back alley" is not even as wide as a regular driveway. A driveway has to be a minimum of ten feet (10') wide and a maximum of fifteen feet (15') wide at the curb line with paving for the first ten feet (10') commencing at the pavement of the intersecting road.

DRIVEWAY REGULATIONS for the TOWN OF LINCOLN, NEW HAMPSHIRE

ARTICLE IV – DRIVEWAY STANDARDS

The following standards shall, at a minimum, apply to all driveways in the Town of Lincoln, except where the driveway intersects a state-maintained road, and NH DOT places other restrictions on the drive entry. Where applicable or appropriate, the NH DOT Typical Design Standards shall be followed ("Policy for the Permitting of Driveways and Other Accesses to the State Highway System; NH DOT Bureau of Highway Maintenance; March 10, 2000).

A. Drive Entrance.

- (1) All drive entries shall be located as shown on the approved plans or as directed by the Lincoln Planning Board.
- (2) Driveway entrances on residential streets shall be a minimum of ten (10) feet and a maximum of fifteen (15) feet wide at the curb line.

B. Paving. In order to protect the physical integrity of the roads, the street-side edge of all driveways must be paved.

- (1) All driveways for commercial, non-residential and residential use shall be paved for at least ten (10) feet commencing at the edge of the pavement of the intersecting road.

C. Travel Width. Driveways must be designed, constructed and maintained so as to have at least a ten (10) foot travel width. Outside of the traveled way there must be enough width to accommodate snow storage areas, drainage, parking areas, clearance for emergency vehicles, etc.

D. Vertical Clearance. Driveways must be designed, constructed and maintained so as to have at least thirteen and one-half (13 ½) feet of vertical clearance.

E. If gated, the following standards apply:

- (1) Gate openings must be at least ten (10) feet wide, except where there are existing stone walls between which the gate will be placed.
- (2) Gates must be located at least thirty (30) feet from any public right-of-way and must not open towards the public right-of-way. Need for a location closer to the public right-of-way may be granted at the discretion of the Planning Board at Site Plan Review.

F. Passing Lanes, Vehicle Turnouts and Vehicle Turnarounds

- (1) Driveways longer than three hundred (300) feet must include a turnout no farther than fifty (50) feet from the primary residence or building. The turnout must be perpendicular to the driveway and be at least ten (10) feet in width and twenty (20) feet in length as measured from the edge of the driveway. The area of the turnout may not be steeper than twelve (12) percent, and have an outside radius of fifteen (15) feet. Other dimensions may be approved, provided the applicant can demonstrate that vehicles can safely back in and drive out.
- (2) Driveways longer than one thousand (1,000) feet must include a passing area at least every eight hundred (800) feet, exclusive of the required turnout in (1) above. This passing area shall be a combined minimum of twenty (20) feet for a length of at least fifty (50) feet, tapered back to the ten (10) foot width on both ends. The grade along the entire length of the passing area must not exceed twelve (12) percent.

Applicant Sullivan states that the Planning Board recently gave "someone" Site Plan Review approval to build an apartment building within the side setback areas and within five feet (5') of major roads, that's going to create more traffic. She states that she thinks it's bad for the Town to allow big apartment buildings and then not allow all the accessory dwellings to pop up because that's the future.

Buildings Need to be Accessible to Safety Services Vehicles

Chair Spanos believes that the Fire Chief should be present at any hearing about this issue to ensure that the Fire Chief/Fire Department could get adequate access to the apartment if needed.

Others Have Detached Accessory Apartments with Access onto Henry Lane (Back Alley)

Ms. Sullivan brings up the “trailer” that’s already on Henry Lane. [She means the modular home.]

Note: In 2007, Ronald & Bonnie Emerson, et.al., PO Box 326, North Woodstock, NH 03262 purchased 41 School Street (Map 113, Lot 109). On the lot was a two and three quarter (2 ¾) story home built in 1927, a four hundred square foot (400 SF) garage built in 1930 and a modular home erected in 1979 on the back garden lot – all constructed prior to the adoption of a Zoning Ordinance (Land Use Plan Ordinance) in 1986.

Selectmen’s Representative OJ Robinson advises that there used to be a trailer (i.e., “manufactured home” or “mobile home”) and “the other one” in existence before the adoption of the current zoning ordinance; back then, property owners were ***not*** required to go before a Planning Board for approval for something like this.

Member Noseworthy states the current structure on the back of the Emerson lot is not a trailer but a modular home.

Selectmen’s Representative OJ Robinson reports he is discussing the trailer that used to be where the modular home is now on the back of the Emerson lot. Member Noseworthy agrees that there used to be a trailer. Regarding the trailer, Member Noseworthy believes, at the time, the owners (Steve’s grandparents?) dug across the road [Henry Lane] to the Emerson home (Steve’s parents’ home) [in the front of the 41 School Street lot] for sewer and water.

Member Beaudin asks, “If the abutters don’t care, what’s the big deal?”

Chair Spanos advises the Planning Board that abutters don’t get notified of a Land Use Permit Application for a Detached Accessory Apartment above a garage, because a permit doesn’t have to come before the Planning Board for Site Plan Review approval.

Member Beaudin asks, but if it did come for Site Plan Review approval then abutters are required to be notified, and questions about building on a Class V or better road could be dealt with at that time and their discussion would include the Fire Chief’s input at the time.

Member Beaudin asks what criteria Delia Sullivan is not meeting?

Planner Bont reports that in **NH RSA 674:41 Erection of Buildings on Streets; Appeals***, there is a list of classes of roads on which the Town is allowed to issue land use permits. (*See Appendix A attached.) The Town can issue Land Use Authorization Permits only if the property has direct access to a Class V or better road. Class I, II, and III highways are those highways controlled and maintained by the New Hampshire Department of Transportation. Class IV, V, and VI highways are those highways for which municipalities must bear the responsibilities. The Town has no legal obligation to maintain a Class VI Road.** (** See attached Local Government Center Legal Brief in appendix.)

Applicant Sullivan points out that she is asking for an accessory dwelling in the back of the School Street Property and School Street is a Class V Road. Therefore, access onto Henry Lane doesn’t come in to play because the frontage for the lot itself is on School Street.

Note: There are no curb cuts onto School Street. The only access is from Henry Lane.

Selectmen's Representative OJ Robinson comments if this is the only lot like this (i.e., with a front lot with a house and a small back garden lot), he'd love to see more residential long-term housing. But in the broader picture, if they allow an accessory dwelling unit anywhere, they can rent it out as an Airbnb because there is nothing in the Land Use Plan Ordinance to prevent it.

Discussion was had about the pros and cons of Short-Term Rentals and Airbnb's amongst all members and Applicant Sullivan. (Too much talking by too many people speaking at the same time to understand what was being said, except that if occupants in Airbnb's become too loud, etc., that is when law enforcement would get involved.)

Ms. Sullivan states it's not fair if the Planning Board tells her she can't do something (i.e., create a long-term rental in a detached accessory apartment) because they don't want something else (i.e., short-term rentals).

Discussion was had regarding surveys of the land to determine setbacks, etc., to what needed to go to zoning for a variance. Ms. Sullivan thanked the Planning Board for their time and was done.

VI. PUBLIC PARTICIPATION AND OTHER BUSINESS:

Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

1. Chair Spanos reports the Town has received an offer to purchase a lot in the Lincoln Business Park a/k/a Lincoln Industrial Park. The offer will be on the Planning Board's agenda in two (2) weeks. Member Beaudin asks what that has to do with the Planning Board. Selectmen's Representative OJ Robinson advises that the BOS is required to notify the PB, the PB has the right to give a recommendation. The Planning Board's recommendation is not binding on the BOS's decision, but it does have to be done. The BOS has the right to sell the land after they notify the Planning Board. The PB gets to weigh in. The BOS then has to have two (2) public hearings. Member Beaudin affirms he understands. Selectmen's Representative OJ Robinson asks if copies are available for the Planning Board now. Planner Bont will take care of that – she left the room to make copies.
2. Member Beaudin asks about what's going on with Pemi Base Camp. Chair Spanos advises the board took a vote to require them to come in for Site Plan Review for the upgrades, but he hasn't heard anything further. Member Beaudin reminds the PB that the vote was in the spring and now it's late Fall. Chair Spanos advises the Pemi Base Camp can be on the agenda for the next meeting.

3. Selectmen's Representative OJ Robinson asks if the PB can look at some of the issues that have been proposed to talk about and not talk about the issues but prioritize them as putting them on future agendas. Member Beaudin asks what list he is referring to. Selectmen's Representative OJ Robinson confirms yes and the additions to it. It was decided to discuss these at the next meeting.
4. Alternate Member Black asks about the update on the hotels/motels on US Route 3 that were considering long-term rentals. Chair Spanos advises that are three areas in Town that have land in General Use (GU) District. If they change the zones, then they have to make specific changes in each zone. They could name the different districts something like "General Use 1 (GU1), General Use 2 (GU2) and General Use 3 (GU3) and then we can tweak them later with the different criteria or requirements. This was discussed at an earlier PB.
5. Alternate Member Black asked if the Planning Board could discuss the possibility for providing incentives for the hotels in the General Use (GU) District on US Route 3 to be converted into long term rental housing. Chair Spanos said the BOS had an ad hoc committee looking into it and an AD HOC committee had a meeting, but it didn't really go anywhere. However, he understands the participants thought it was a good idea. Chair Spanos reports that the older hotel buildings over on US Route 3 aren't really constructed in a way to be suitable for long term housing. Those buildings would need significant renovations. The cost of those renovations is cost-prohibitive. (Some talking over each other that was hard to understand.)
6. Member Beaudin asked who the current realtors for the Town are to sell the lots in the Lincoln Industrial Park a/k/a Lincoln Business Park. Selectmen's Representative OJ Robinson said that Realtor Thomas Tremblay brought in the offer. Member Beaudin said he thought that Kevin McNamara said he had several people interested. Robinson said it did not pan out. Member Beaudin asked if the BOS changed the covenants. Selectmen's Representative OJ Robinson said, yes.

VII. ADJOURNMENT @ 50:51 MINUTES

Motion to Adjourn by Vice Chair Chenard.
Selectmen's Representative OJ Robinson seconded.
All in Favor. Adjourned at 6:51 PM.

Respectfully submitted,

Kara Baker
 Recording Secretary

Date Approved: November 8, 2023


 Chairman Spanos

Appendix A.

674:41 Erection of Buildings on Streets; Appeals. –

I. From and after the time when a planning board shall expressly have been granted the authority to approve or disapprove plats by a municipality, as described in RSA 674:35, no building shall be erected on any lot within any part of the municipality nor shall a building permit be issued for the erection of a building unless the street giving access to the lot upon which such building is proposed to be placed:

(a) Shall have been accepted or opened as, or shall otherwise have received the legal status of, a class V or better highway prior to that time; or

(b) Corresponds in its location and lines with:

(1) A street shown on the official map; or

(2) A street on a subdivision plat approved by the planning board; or

(3) A street on a street plat made by and adopted by the planning board; or

(4) A street located and accepted by the local legislative body of the municipality, after submission to the planning board, and, in case of the planning board's disapproval, by the favorable vote required in RSA 674:40; or

(c) Is a class VI highway, provided that:

(1) The local governing body after review and comment by the planning board has voted to authorize the issuance of building permits for the erection of buildings on said class VI highway or a portion thereof; and

(2) The municipality neither assumes responsibility for maintenance of said class VI highway nor liability for any damages resulting from the use thereof; and

(3) Prior to the issuance of a building permit, the applicant shall produce evidence that notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds; or

(d) Is a private road, provided that:

(1) The local governing body, after review and comment by the planning board, has voted to authorize the issuance of building permits for the erection of buildings on said private road or portion thereof; and

(2) The municipality neither assumes responsibility for maintenance of said private roads nor liability for any damages resulting from the use thereof; and

(3) Prior to the issuance of a building permit, the applicant shall produce evidence that notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds for the lot for which the building permit is sought; or

(e) Is an existing street constructed prior to the effective date of this subparagraph and is shown on a subdivision plat that was approved by the local governing body or zoning board of adjustment before the municipality authorized the planning board to approve or disapprove subdivision plats in accordance with RSA 674:35, if one or more buildings have been erected on other lots on the same street.

II. Whenever the enforcement of the provisions of this section would entail practical difficulty or unnecessary hardship, and when the circumstances of the case do not require the building, structure or part thereof to be related to existing or proposed streets, the applicant for such permit may appeal from the decision of the administrative officer having charge of the issuance of permits to the zoning board of adjustment in any municipality which has adopted zoning regulations in accordance with RSA 674, or, in municipalities in which no board of adjustment exists, to the local legislative body, or to a board of appeals, whichever is appropriate, in accordance with RSA 674:14 and 674:15, including the requirement for a public hearing. In a municipality which does not require building permits, direct application may be made to the zoning board of adjustment, or the local legislative body, or the board of appeals for permission to erect the building. In passing on such appeal or application, the board of

adjustment, local legislative body, or board of appeals may make any reasonable exception and shall have the power to authorize or issue a permit, subject to such conditions as it may impose, if the issuance of the permit or erection of the building would not tend to distort the official map or increase the difficulty of carrying out the master plan upon which it is based, and if erection of the building or issuance of the permit will not cause hardship to future purchasers or undue financial impact on the municipality. Any such decision made in this connection by a board of adjustment, local legislative body, or by a board of appeals pursuant to this section and RSA 674:14 and 674:15 shall be in writing, together with the reasons for the decision, and shall be subject to review in the manner described in RSA 677.

II-a. Municipalities may except any lot, including island lots for islands served exclusively by boats, from the requirements of paragraphs I and II by an affirmative vote of the local legislative body pursuant to RSA 675, first submitted to the planning board for its approval and:

- (a) If approved by the board, approved by a majority of those present and voting at a regular or special meeting of the local legislative body; or
- (b) If disapproved by the planning board, approved by not less than 2/3 of those present and voting at a regular or special meeting of the local legislative body.

III. This section shall supersede any less stringent local ordinance, code or regulation, and no existing lot or tract of land shall be exempted from the provisions of this section except in accordance with the procedures expressly set forth in this section. For purposes of paragraph I, "the street giving access to the lot" means a street or way abutting the lot and upon which the lot has frontage. It does not include a street from which the sole access to the lot is via a private easement or right-of-way, unless such easement or right-of-way also meets the criteria set forth in subparagraphs I(a), (b), (c), (d), or (e).

IV. In addition to the requirements for the erection of buildings in paragraph I and notwithstanding the exceptions provided in paragraph II, the planning board for a county in which there are located unincorporated towns or unorganized places shall require every building which is erected on leased land located within an unincorporated town or unorganized place to have a building permit. A building permit shall be required under this paragraph regardless of the proximity of the building to any street or highway. The county shall, by resolution, authorize the planning board to issue building permits under this paragraph.

Source. 1983, 447:1. 1988, 131:2, 3. 1989, 266:20. 1995, 291:10. 1998, 344:6. 2002, 270:1, 5. 2004, 154:1, 2. 2005, 226:1, 2, eff. Sept. 3, 2005.



Local Government Center

Legal Briefs

Plowing Private Roads, Driveways and Class VI Roads

New Hampshire municipalities have no legal obligation to plow, salt or sand Class VI roads, private roads or private driveways with municipal funds or resources. More importantly, they have no legal **authority** to do this, except in very narrow circumstances.

For a very long time, New Hampshire municipalities have been prohibited from appropriating or spending public funds or using public resources on purely private purposes such as the plowing of Class VI roads, private roads and driveways. The New Hampshire Supreme Court clarified this point in 1952 in the case of *Clapp v. Town of Jaffrey*, 97 N.H. 456 (1952). Towns and cities may appropriate money “for any purpose for which a municipality may act if such appropriation is not prohibited by the laws or the constitution of this state.” RSA 31:4. Under the New Hampshire Constitution, *public money can be appropriated only for valid public purposes, but not to create a purely private benefit*. When a private driveway is plowed, this benefits only the private owners of that property. When a private road is plowed, it benefits only the private property owners along that road. These are not valid public purposes. As a general rule, town money can't be granted to or spent on a benefit for a private person, company or organization unless that private person takes on some obligation to benefit the town. See *Clapp v. Town of Jaffrey*, 97 N.H. 456 (1952); *Opinion of the Justices*, 88 N.H. 484 (1937). In other words, there must be a “quid pro quo” by which the town obtains something real in exchange for that public money. If a town or city simply spends its highway funds (or other municipal money) to provide this service to private property owners without any payment or quid pro quo by those particular owners for the service, this is a problem.

Furthermore, there is no authorization in the law for any municipality to spend public funds to maintain Class VI roads, private roads or driveways. The fundamental rule of municipal government in New Hampshire is that towns and cities get all of their authority to act from the state legislature. See *Girard v. Allenstown*, 121 N.H. 268 (1981). This means that municipalities have to go one step further than everyone else; they cannot rely on the fact that there is no statute prohibiting a certain action, but instead have to find a statute that specifically permits it. “Towns only have such powers as are expressly granted to them by the legislature and such as are necessarily implied or incidental thereto.” *Girard*, 121 N.H. at 271. The law specifically allows municipalities to spend town money to maintain Class IV and V roads, but there is no authorization for Class VI or private roads, or private driveways. RSA 231:59.

Given all this, if a municipality wants to spend public funds to plow Class VI roads, private roads or private driveways (either by using municipal equipment and employees or by contracting with someone to provide that service), it can only do so legally if: (1) each owner of the plowed driveways and each property owner along a Class VI or private road pays the town the cost of that service, and (2) this plowing is truly “subordinate and incidental” to the needs of the municipality’s own highways. See *Clapp v. Jaffrey*, 97 N.H. 456 (1952). Using tax money raised from all citizens to provide a purely private benefit for a select portion of the citizens is not legal, no matter how small the amount.

There are many risks to this activity:

- Illegally spending town or city funds exposes a municipality to a citizen lawsuit for improper expenditure of funds.
- A Class VI Road may become Class V even if the municipality did not mean to change its classification. While Class VI roads are public roads, and the municipality has the authority to regulate their use, the municipality has no obligation or authority to maintain them. It is possible for a Class V Road (usually thought of as an “ordinary” town road) to lapse into Class VI status over time. If the municipality fails to maintain or repair a Class V Road for five successive years or more in suitable condition for travel, its classification automatically changes to Class VI. RSA 229:5, VII. Nevertheless, the road may once

again become a Class V Road (which the municipality must fully maintain and repair) if the municipality regularly repairs and maintains it on more than a seasonal basis, in a suitable condition for year-round travel, for at least five successive years. RSA 229:5, VI.

- Public maintenance of a private road could arguably be construed by a court as an acceptance of the highway, resulting in the municipality's permanent responsibility not only to plow that road, but also to repair and maintain it. *Hersh v. Plonski*, 156 N.H. 511 (2007).
- Towns and cities are also granted significant protection from liability with respect to the use of public roads, but the same is not true for private roads or driveways. This means a town or city might find itself forced to pay for injury or damage caused by the plowing activity on a private road or driveway that it would not be liable for on a Class IV or V road. See RSA 231:92-a; RSA 507-B:2-b.

If a municipality is currently providing maintenance services to Class VI roads, private roads or driveways, this practice generally should be stopped. If a governing body wishes to continue this service, it should only do so under the following conditions:

1. All landowners whose driveways are plowed/maintained or who live on a private road that is plowed/maintained should be charged a fee so that the municipality spends no tax dollars or other public funds for this service.
2. The governing body should only provide the service if they determine it is "subordinate and incidental" to the needs of the municipality's own highways. In other words, does it benefit the town or city by ensuring that, for instance, snow from private driveways does not end up in the street and cause an ice problem, or that municipal plows need to travel through a private road to reach the public roads they have to plow, or that municipal plows have an area to turn around or access the public roads that they have to plow? If it is not truly "subordinate and incidental" to the needs of the municipality's other functions (words which the New Hampshire Supreme Court has said are "vital and restrictive," and should not be read broadly), then the plowing is illegal. See *Clapp v. Jaffrey*, 97 N.H. 456 (1952).
3. The governing body should require a written agreement with each landowner that explicitly recognizes that the private road or driveway is not "dedicated" to the town by the owner, that the maintenance does not constitute "acceptance," and that the owner will indemnify the municipality for any and all liabilities resulting from the work.
4. Alternatively, for private roads, the governing body might choose to declare one or more of these private roads "emergency lanes" under RSA 231:59-a. In a town, an emergency lane declaration may only be made by the board of selectmen after a public hearing if the selectmen find that "the public need for keeping such lane passable by emergency vehicles is supported by an identified public welfare or safety interest which surpasses or differs from any private benefits to landowners abutting such lane." RSA 231:59-a, II. If a road is declared an emergency lane, municipal funds may then be spent to remove brush, repair washouts or culverts, plow, or do other work "deemed necessary to render such way passable by firefighting equipment and rescue or other emergency vehicles." RSA 231:59-a, I. The municipality then has the authority, but not the obligation, to maintain the road in that manner. An emergency lane declaration may be withdrawn or disregarded at any time by the selectmen, and no one may recover damages from the town for failure to maintain an emergency lane. RSA 231:59-a, IV.

C. Christine Fillmore, Staff Attorney February 2010

