



TOWN OF DURHAM
15 NEWMARKET RD
DURHAM, NH 03824-2898
603/868-8064 603/868-8065
FAX 603/868-8033
www.ci.durham.nh.us

NOTICE OF DECISION

Project: **9 Lot Conservation Subdivision** composed of 2 existing lots and 7 new lots
Address: 110 and 114 Mill Road
Applicant: John Farrell
Surveyor: David Vincent
Property Owner: Martha Garland and Joyce Schow - Melanson
Map and Lot: Map 13, Lot 15-1 and 15-2
Zoning: Residence B
Date of approval: **May 8, 2013**

"Applicant", herein, refers to the property owner, business owner, individual(s), or organization submitting this application and to his/her/its agents, successors, and assigns.

PRECEDENT CONDITIONS

[Office use only. Date certified: _____ Plans recorded? _____
As built received? _____ Surety returned? _____]

All of the precedent conditions below must be met by the applicant, at the expense of the applicant, prior to the plans being certified by the Planning Department. Certification of the plans is required prior to commencement of any site work, recording of any plans, or sale of any lots. Once these precedent conditions are met and the plans are certified the approval is considered final.

***Please note.** If all of the precedent conditions are not met within 6 calendar months to the day of the board's approval - by November 8, 2013 - the board's approval will be considered to have lapsed and resubmission of the application will be required (unless an extension is granted by the Planning Board). **It is the sole responsibility of the applicant (or his/her agent) to ensure that these conditions are met by this deadline.** We urge the applicant to carefully track his/her progress in meeting the individual conditions. See RSA 674:39 on vesting.

- 1) Plan modifications. The plans are to be modified as follows:
 - a) Change signature block to say "Planning Director"
 - b) Label everything consistently on the plan and in the notes and on the draft deed: "Conservation Area" and "Public Portion of Conservation Area," as appropriate.
 - c) Add conservation area boundary line on lot 15-2 in proximity to the lot line that is being eliminated [*I believe this is the intent now but it is not clear in the drawing*]

- d) Confirm that the calculation of the conservation area is accurate, and submit a revised calculation if it is not.
- e) Break note 10) into two separate notes, one about access to the public portion of the conservation area and one about what is permitted in the conservation areas.
- f) Add separate sheet showing only the lots without wetlands and other data, for clarity. Highlight the public portion of the conservation area with a prominent note: "The general public has the right to use the Public Portion of the Conservation Area located on lots 15-1 and 15-2, as shown on this plan. Use is restricted to non-motorized vehicles, walking, and passive uses. Access to the Public Portion of the Conservation Area may be obtained along the frontage of Mill Road of Lot 15-1 between Lot 15-3 and 16-0."
- g) Show final area of Lot 13-15-2.
- h) Correct several conservation boundary lines (that are not continuous) on Sheet 2

2) Plan notes. Add the following notes to the plan:

- a) "Map 13, Lot 16-0 is not part of this subdivision."
- b) "All lot corners shall be marked with capped iron markers or other appropriate monumentation."
- c) "Parcel A is land being conveyed from Lot 15-1 to 15-2."
- d) "Areas beyond the Public Portion of the Conservation Area, including other conservation areas, are not open to the general public nor to other lot owners within this subdivision."
- e) "There is to be no further subdivision of any of the lots. Lot lines may be minimally adjusted such that there would be no material impact on the open space or character of the subdivision. No additional buildable lots beyond the number approved in this plat will be permitted."
- f) "Driveways may not be placed within the 75 foot wetland buffer area (shown as building setback line, where applicable) unless a conditional use is obtained.
- g) "All areas designated as conservation areas must remain as such in perpetuity. No development nor subdivision of these areas shall be permitted.
- h) "All houses must be properly numbered and identified so that the address is clearly visible from Mill Road."
- i) "All utilities must be underground, including utilities extended onto the site from existing poles near the site. However, if the only available pole nearby is across the street, one additional pole may be placed on/near the property to allow for overhead extension of wires across the street. Utilities extending from any such new pole must be underground. The applicant may work with the Town staff as appropriate to address this requirement."

- j) "The Town of Durham or its authorized representative has the right to enter upon any lot in this subdivision for the purpose of biennial inspection for compliance with the conservation requirements of this Conservation Subdivision and of the Town of Durham Subdivision Regulations and Zoning Ordinance."
- 3) Executory interest. Convey an executory interest with power of termination to the Town of Durham to enforce the provisions of the conservation restrictions (This may be treated as a subsequent condition at the discretion of the Planning Director, if not practical to treat it as a precedent condition.)
- 4) Addresses. submit proposed street addresses to be approved by the Durham Fire Department. If the address for Lot 15-2 needs to be changed then the applicant shall coordinate changing that address accordingly.
- 5) Driveway reclamation. The driveway on Lot 15-1 shall be physically reclaimed as stated on the plans. Reclamation means that the entire portion within the right of way must be reclaimed consistent with the adjacent land in the right of way, or better, as determined by the Planning Director.
- 6) Notarized deed. The applicant shall submit to the Planning Department a copy of the signed and notarized deed, which will effect the conveyance of the land from Lot 15-1 to 15-2. (After the plat is certified by the Planning Department the original deed and plat will then be recorded simultaneously (see below).
- 7) Stewardship account. A stewardship account with the Town of Durham shall be established. The applicant shall contribute \$1,000 to the account.
- 8) Draft deeds. Provide a revised draft deed, including: a) appropriate deed restrictions or covenants for conservation areas; and b) access for inspections for compliance with the conservation requirements to be approved by the Town Attorney. Multiple versions may be appropriate for different lots.
- 9) Other permits. All required state and federal permits - including State approval of the subdivision, alteration of terrain, as appropriate - must be obtained with copies of permits or confirmation of approvals delivered to the Planning Department.
- 10) Final drawings. The following complete sets of final approved drawings shall be submitted for signature (except the electronic version) by the Town: (a) one large set of mylars; (b) two large set of black line drawings (one to be recorded at the Registry); (c) one set of 11"x17" drawings; plus (d) one electronic version by pdf or CD. Each individual sheet in every set of drawings must be stamped and signed by the land surveyor responsible for the plans. Please note. If there are significant changes to be made to the plans, as specified above, one full size paper check print must be sent to the Planning Department for review prior to producing these final drawings. (The primary set of plans was last received March 28, 2013.)

GENERAL AND SUBSEQUENT TERMS AND CONDITIONS

The following terms and conditions apply to this approval.

- 1) Site work. No site work may be undertaken until all of the precedent conditions are met and the plans are certified.
- 2) Driveway locations. As part of the driveway applications the Town Engineer may modify the driveway locations, as appropriate. Otherwise, the driveways shall be placed where shown on the plans.
- 3) Erosion control. Best management practices for erosion and sedimentation control and protection of the wetlands may be required, as appropriate, as part of the building permit application process for each individual lot.
- 4) Recording. The plat and this notice of decision (per RSA 676:3 III), must be recorded at the Strafford County Registry of Deeds within two (2) calendar months to the date the plat is certified (e.g. if certified September 9th it must be recorded by November 9th). See RSA 478:1-a regarding plat requirements. Failure to comply with this requirement herein shall render the subdivision null and void.
- 5) Stewardship account. The Town of Durham may disburse funds from the stewardship account as it sees fit to compensate any appropriate party authorized by the Town's Planning Director (such as the Conservation Commission) to inspect the lots to ensure compliance with the provisions of this approval.
- 6) Execution. The project must be built and executed exactly as specified in the approved application package unless changes are approved by the City.
- 7) Approval. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of this approval unless otherwise updated, revised, clarified in some manner, or superseded in full or in part. In the case of conflicting information between documents, the most recent documentation and this notice herein shall generally be determining.
- 8) Other permits. It is the responsibility of the applicant to obtain all other local, state, and federal permits, licenses, and approvals which may be required as part of this project.
- 9) Violations. In the event of any violations of these conditions of approval or of any pertinent local, state, or federal laws – such as those regarding erosion and sedimentation control, wetlands, stormwater management, and general site development standards – the Town of Durham reserves the right to take any appropriate permissible action, including, but not limited to, withholding of building permits, withholding of certificates of occupancy, withholding of driveway permits, revocations of permits/approvals, and referring violations to other agencies.
- 10) Findings of fact. a) Section 175-107 B. requires that any residential subdivision in the Residence B zoning district be a conservation subdivision., and the exemption criteria do not apply; b) This 9-lot subdivision is created from 2 existing lots – Lots 15-1 and 15-2; c) The applicant submitted an application, supporting documents, and plans for the project; d) The Planning Board conducted a preliminary conceptual review on August 25, 2010

and a design review on September 14, 2011 of this application; e) The application was accepted as complete on August 22, 2012; f) The Planning Board held two site walks on the property; g) The Planning Board held several public hearings on the application; h) The applicant presented the application to the Durham Conservation Commission on November 11, 2010; i) The Planning Board reviewed the application in accordance with state law, the Durham Zoning Ordinance, the Durham Subdivision Regulations, and other applicable law and found that the application meets all requirements, as may be reasonably construed and applied; j) The Planning Board finds that this application is not a Development of Regional Interest; k) The Planning Board duly approved the application as stated herein; and l) The Zoning Board of Adjustment granted a special exception on May 8, 2012 with respect to leach field locations.

Signature of Applicant

date

Signature of Planning Board Chair

date