



**TOWN OF DURHAM**  
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***Town Planner's Recommendation***  
**Wednesday, October 14, 2015**

XIII. **Edgewood Road and Emerson Road Subdivision**. 4-lot subdivision, boundary line adjustment and conditional use (for a wetland crossing, a road widening, and construction of a shared driveway in the Wetland Conservation Overlay District). Jack Farrell, applicant. County Line Holdings, LLC and Mark Morong 1991 Trust, owners. David Vincent, surveyor. Map 1, Lot 15-0. Residence A Zoning District.

- I recommend the board discuss the draft conditions of approval and schedule a public hearing for November 18.

Please note the following:

**Process**

- 1) **Tabling of application**. The application was tabled by the Planning Board on June 24, 2015. See the enclosed letter to the applicant with the terms. The applicant revised the plans accordingly. I believe that he has met the requirements of the letter so the application is back before the board.
- 2) **Process**. I have included a *rough draft* of proposed conditions of approval below. I think the application may be ready for final action on November 18. If there are significant concerns about the application or the draft conditions, it might be worthwhile to include this project on the November 4 agenda for the special meeting (?). *I will refine these conditions below in advance of the next meeting.*
- 3) **Public hearing**. We need to schedule another public hearing as the plans have changed significantly. This can be scheduled for November 18 (or possibly November 4). The first public hearing was closed on June 24, 2015.
- 4) **Conditional Use**. This project involves a conditional use for activity within the wetland buffers. The board will need to review the 8 criteria prior to final action. The applicant has spoken to these criteria in his application.
- 5) **Conservation Commission**. The commission reviewed the application for the conditional use and provided comments about the conditional use. It has changed a few times but I believe that Ann Welsh, the chair, is comfortable that the revised application is consistent with their review. I will confirm this. If necessary, the commission could take another look at the plans on November 12.

The Conservation Commission reviewed the application on February 12, 2015 and recommends approval of the conditional use with the following conditions (my paraphrasing DCC Chair Ann Welsh's email to me):

- a) The applicant will need to come back to the Conservation Commission as part of the NHDES Dredge and Fill review to fill the wetland, so other appropriate conditions may be specified at that time.
  - b) Every effort shall be made to save any large trees on the property.
  - c) The Conservation Commission reserves the right to comment on conditional use permit conditions two, three, and four as part of the NHDES wetland review.
- 6) Staff review. We presented the revised plans to the Technical Review Group on September 15 and there were no particular concerns other than Tom Johnson expressing a different opinion about the handling of garbage (See below).
- 7) Waivers. The applicant has requested several waivers, including waivers from the Conservation Subdivision requirements. Since this will not be a conservation subdivision granting of those waivers makes sense. This waiver should be given because the specific circumstances of the subdivision will carry out the intent of the regulations. This rationale must be noted in the Planning Board minutes per state law.

### **Design issues**

- 8) Edgewood Road improvements. Note that the design of the widening of Edgewood Road has been changed some from the prior plans. Earlier, all of the additional gravel was to be placed on the northeast side of the road. Now it will be placed on both sides.
- 9) Trash. It was the sense of both the TRG and the board to not create a shed or other provision for trash for the 3 new lots. Homeowners would need to bring their trash to Emerson Road for pick up. Tom Johnson, Building Official, however, recommends that a specific area and structure be established for the handling of trash.

The TRG spent a good amount of time wrestling with this issue on April 14. After considering the various possibilities, members present thought it made sense to not erect any structure but rather let lot owners know that the Town does not pick up trash on the Class 6 road nor on the shared driveway, and that owners may either bring their trash to the end of the Class 5 portion of Edgewood Road or take it to the transfer station on Durham Point Road. We should note that the Town reserves the right to not pick up trash at the end of Edgewood Road if the trash is not maintained in a neat and orderly manner. This information could be included in the maintenance agreements and the deeds, as appropriate. The Town picks up trash along Town roads in front of single family houses.

Situations like this fall into a gray area. The houses are single family but they are not located along a Town road. The challenges with requiring the applicant to erect an enclosure is that it would need to be maintained. The Town would not maintain it and it could be difficult to get the owners to maintain it. The structure would be in view all the

time whereas the trash would be there only one day per week. Note that Town vehicles do not drive on Class 6 roads. Tom Johnson, Building Official (who could not make the TRG meeting), in contrast, believes that another approach is needed.

- 10) Town water. The applicant proposes to have private wells rather than Town water, even though Town water is available, as he proposes to use geothermal. I believe that use of private wells is more efficient than extending Town water if geothermal is used because the wells are already drilled, but this should be confirmed. The three houses will be sprinkled. I do not see any specific requirements in the regulations to tie into Town water and have not received any definitive comments from staff. I will discuss this further with them. The applicant says: “Sometimes connecting to town water is way expensive. The small private wells can easily provide the need and keep additional pressure off limited town supplies.”
- 11) Electric. The applicant needs to show precisely how the underground electric on the site will tie in with the existing electric service on Edgewood Road. It is not clear from the drawing.

### **Staff Signoffs**

We have signoffs from all four pertinent departments via email (Chief Kurz provided a separate memo). *Note that the comments are not extensive because the staff has provided guidance along the way and earlier concerns have been incorporated into the plans.* I will incorporate the concerns below into the draft conditions of approval, as appropriate.

#### April Talon, Town Engineer:

“I would like them to tie directly into the manhole in Edgewood Road and not to the stub. It may also require an inside drop or reworking the invert. The culverts should have flared end sections not just exposed plastic pipe.”

#### Tom Johnson, Building Official:

“I was okay with it outside of the concern for trash collection and the uncertainty about the Town water hookup versus well.”

#### John Powers, Deputy Fire Chief:

“As long as they can provide proof that our apparatus won't adversely affect the underground utilities as proposed, DFD is ok with the change.”

#### Dave Kurz, Police Chief:

“Although I provided a review of this project in March 2015, I would reiterate my comments pertaining to the development of the 3-lot subdivision off Edgewood Road as it pertains to the police department:

- The existing roadway intersecting with Emerson Road has plenty of sight distance posing no significant challenge.
- Since the three lots have buildings shielded by trees from Edgewood Road it is critical that the homes are properly numbered and/or identified to allow for the quick and efficient delivery of police services.

- There currently exist adequate police resources to serve the needs of residential property. However, each additional home added to the tax roll will ultimately have a cumulative effect upon police capacity to respond.”

**\*Draft\***  
**NOTICE OF DECISION**

**Project Name:** Edgewood Road – Emerson Road Subdivision  
**Project Description:** 4-lot subdivision  
**Applicant:** Jack Farrell  
**Surveyor:** David Vincent  
**Engineer:** Neil Raposa, Civil Consultants  
**Property Owner:** County Line Holdings, LLC and Mark Morong 1991 Trust  
**Map and Lot:** Map 1, Lot 15-0  
**Zoning:** Residence A  
**Date of approval:** #

This project has been approved as stated herein. "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: \_\_\_\_\_ ; As-built's received? \_\_\_\_\_ ; All 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 issuance of any building permit or recording of any plans. 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 May 18, 2015 - the board's approval will be considered to have lapsed and resubmission of the application will be required (unless an after-the-fact 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.

**Plan Modifications**

The plan drawings are to be modified as follows:

- 1) Boundary Line Adjustment. Add "Boundary Line Adjustment" in prominent letters in the box that says "Parcel A."

- 2) Sewer. Tie directly into the manhole in Edgewood Road and not to the stub. This may require an inside drop or reworking the invert. The culverts must have flared end sections not just exposed plastic pipe.
- 3) Street name and addresses. Determine a street name for the shared driveway and addresses for the 3 lots to be approved by the Fire Department. Show the name and street addresses on the plans. Due to the houses being set into the woods, it is critical that they be properly numbered and identified. Obtain comments from the Police Department on the addressing plan.
- 4) Mail boxes. Mail boxes should probably be placed near the street sign. The Post Office will drive down the Class 6 road to reach them.
- 5) Transformer. Add vegetative screening around the transformer.
- 6) Lot Buffers. Clarify and identify no-cut buffers on the lots.
- 7) Driveway easement. Adjust metes and bounds of driveway easement as needed to reconcile the plat and driveway plans.

#### **Plan Notes**

Add the following notes (or equivalent) to the plan drawings:

- 8) “A dredge and fill permit and a conditional use would be needed for a driveway to cross the wetland buffer for Lot 15-0 should the property owner desire to locate a house in the larger, developable area.:
- 9) Sprinklers. A condition of the Fire Department agreeing to this road/driveway layout is for the 3 houses that would take access to this road to be sprinkled.
- 10) “For more information about this subdivision, or to see the complete plan set, contact the Town of Durham Planning Department, 8 Newmarket Road, Durham, NH 03824, (603) 868-8064.”
- 11) “All outside construction activity related to the development of this site is restricted to the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday and 8:00 a.m. to 6:00 p.m. Saturday.”
- 12) “There is to be no further subdivision of any of the lots. Lot lines may be adjusted such that there would be no material impact on the character of the subdivision. No additional buildable lots beyond the number approved in this plat will be permitted (this requirement is made pursuant to the variance granted and the Planning Board’s review of the parent parcel and a determination that the number of lots approved is the maximum appropriate for the parcel).”
- 13) “An orange construction fence must be placed alongside the wetland buffer prior to the start of construction on all lots that contain a wetland buffer (this is not required if the required silt fence is orange).”

- 14) “As a condition of this subdivision, due to access constraints, All four lots are restricted to single-family houses; all three lots accessed from Edgewood Road are restricted to single-family use, with no accessory dwelling units and no home occupations. The developer has agreed to this restriction.”
- 15) “As part of the conditional use for activity within the wetland buffer, the developer and individual home owners shall make every effort shall to save large trees on the property.”
- 16) “It is a condition of this subdivision that the owners of the three new lots accessed from Edgewood Road are responsible for maintenance of the Class 6 portion of Edgewood Road. This approval does not impose any requirements upon other property owners taking access from this road to participate in the maintenance.”
- 17) Road Maintenance Agreement. The applicant prepared a draft Road Maintenance Agreement for Class VI Portion of Edgewood Road Extension (It is no longer called “Extension”) among the 3 owners of the proposed lots and the 2 existing lots that already take access from the Class 6 Road. Mr. Farrell said he is in discussions with the owners of the two other lots (12-6 and 12-9) that already take access from this road and is trying to develop a maintenance agreement among those two owners and the three new lots. Presumably, this would apply only to the Edgewood Road section, since it is only those two owners who take access from the portion beyond Edgewood Road, that lies within the DOT right of way.
- 18) “Trash. The Town does not pick up trash on the Class 6 portion of Edgewood Road nor on the shared driveway. Homeowners may either bring their trash to the end of the Town-maintained portion of Edgewood Road or take it to the transfer station on Durham Point Road. The Town reserves the right to not pick up trash at the end of Edgewood Road if the trash is not maintained in a neat and orderly manner.”

**Other Precedent Conditions**

- 19) Notarized deed. The applicant must submit to the Planning Department a copy of the signed and notarized deed, which will effect the conveyance of the affected land (the land within the lot lines being adjusted). (After the plat is certified by the Planning Department the original deed and plat will then be recorded simultaneously (see below). The deed may refer to the plat and state that the conveyance is not effective until such time as the plat is certified and all documents are recorded.) This requirement is waived if the same party owns both lots.
- 20) Fire Apparatus. Confirm to the satisfaction of the Fire Department that the apparatus will not adversely impact the underground utilities.
- 21) Surety. The applicant shall post an acceptable surety to cover the cost of the improvements to Edgewood Road and the shared driveway and the installation of utility and other infrastructure.
- 22) Outstanding fees. Pay balance of any fees that are due.

- 23) Other permits. All required state and federal permits - including State approval of the subdivision, alteration of terrain, dredge and fill, as appropriate - must be obtained with copies of permits or confirmation of approvals delivered to the Planning Department.
- 24) Easements. Finalize language of easements, deeds, and other restrictions with the Town Planner.
- 25) Deeds - sprinklers. The deeds must include appropriate language. Submit draft deeds to the Town Planner for review. Sprinklers. A condition of the Fire Department agreeing to this road/driveway layout is for the 3 houses that would take access to this road to be sprinkled.
- 26) Deeds - trash. The Town does not pick up trash on the Class 6 portion of Edgewood Road nor on the shared driveway. Homeowners may either bring their trash to the end of the Town-maintained portion of Edgewood Road or take it to the transfer station on Durham Point Road. The Town reserves the right to not pick up trash at the end of Edgewood Road if the trash is not maintained in a neat and orderly manner.
- 27) Deeds – easements. Add appropriate language for the easements
- 28) Deeds – process for construction of road/driveway.
- 29) Deeds – maintenance.
- 30) Sprinklers. Develop plan for sprinklers acceptable to the Fire Department, recognizing that the houses will be served by private wells [If the subdivision is approved with private wells]
- 31) Council Authorization. Approval from the Town Council is needed for authorization to issue building permits for the three new lots to take access off a Class 6 road and a shared driveway (per RSA 674:41 (c)(1) and (d)(1).
- 32) Surety. Provide surety for installation of infrastructure (including for placement of all property monuments) satisfactory to the Public Works and Planning Departments. Note that if the City calls the surety, the City may use the funds to install infrastructure and/or reclaim the site, as appropriate.
- 33) Electric service approval. Obtain written confirmation from Eversource Energy that the plans for electric service to and on the site are acceptable.
- 34) Signature. The property owners and developer shall sign this notice at the bottom.
- 35) NHDES – Dredge and Fill. The applicant will need to come back to the Conservation Commission as part of the NHDES Dredge and Fill review to fill the wetland. The Commission may stipulate any additional other appropriate conditions at that time, as provided in the conditional use for activity within the wetland buffer.

- 36) Private Driveway Agreement. The applicant prepared a draft Private Common Driveway Maintenance Agreement for the private shared driveway. Make changes as needed.
- 37) Road Maintenance Agreement. The applicant prepared a draft Road Maintenance Agreement for Class VI Portion of Edgewood Road Extension (It is no longer called "Extension") among the 3 owners of the proposed lots. Make changes as needed. [See notes from Laura Spector and Peter Wolfe]
- 38) NHDES approval. Obtain NHDES approval for the subdivision, unless waived [*It may not be necessary with Town sewer and private wells*]
- 39) Boundary markers. Set boundary markers for the new lots (actually physically set in place in the field) and note on plans ("marker set" or equivalent) or place an acceptable surety with the Planning Department to place them at a later time.
- 40) Indemnification form. Submit draft indemnification form per RSA 674:41 for approval to the Planning Department (to be recorded below) for the three news lots (It is not needed for the lot taking access from Emerson Road). This form is required under state law for lots that do not take direct access from a public or comparable street. The purpose is to clarify that the Town does not maintain the shared driveway and to indemnify the Town of Durham in the event that the property owner fails to properly maintain the shared driveway, thereby impacting access for emergency vehicles.
- 41) Final drawings. The following complete sets of final approved drawings shall be submitted for signature (except the electronic version) by the Town, including all sheets: (a) one large set of mylars; (b) one large set of black line drawings; (c) one set of 11"x17" drawings; and (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, engineer, or architect 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 ....)

### **GENERAL AND SUBSEQUENT TERMS AND CONDITIONS**

All of the conditions below are attached to this approval.

#### **Conditions to be met prior to commencing any site work**

- 1) Site work. No significant site work or ground disturbance may be undertaken until:
  - a) all of the precedent conditions are met and the plans are signed;
  - b) the preconstruction meeting with Town staff has taken place (See below);
  - c) limits of clearing have been established in the field and approved by the Public Works Department; and
  - d) all appropriate erosion and sedimentation control structures are in place.

- e) These erosion and sedimentation control measures and designation of the limits of clearing must be in place prior to the pre-construction meeting in order that they may be inspected at or prior to the meeting.
  - f) If applicable, the Stormwater Pollution Prevention Plan (SWPPP) is prepared and the Notice of Intent (NOI) is filed with the EPA (Also, see note on SWPPP above) and a copy of the SWPPP is provided to the Department of Public Works.
  - g) Gravel. The gravel will need to be good processed gravel. DPW must approve the specifications.
  - h) Access for construction. The applicant shall obtain approval from the Public Works Department for the access way that will be used for construction of the shared driveway.
- 2) Preconstruction meeting. Contact Michael Behrendt, the Town Planner, at (603) 868-8064 to arrange for the preconstruction meeting.

**Conditions to be met prior to issuance of any building permit**

**Conditions to be met prior to issuance of any certificate of occupancy**

- 3) All improvements – road, shared driveway, utilities, and other infrastructure, must be in place.
- 4) As built. One set of full size (measuring at least 22" x 34") black line paper plus one full size mylar, plus one 11" x 17" paper copy plus a digital pdf copy of the as-built plans (or "record drawings") stamped and signed by the Engineer or Surveyor showing the improvements to the Class 6 roads, including the widening and utilities, are to be submitted to the Planning Department prior to the issuance of any certificate of occupancy (unless an appropriate surety is placed).

**Other terms and conditions**

- 5) Process. No building permit on any of the 3 lots shall be issued until a full surety is posted to guarantee the construction of all improvements. Then, no certificate of occupancy shall be issued until all improvements are completed.
- 6) Monumentation. All lot corners shall be marked with capped iron markers or other appropriate monumentation (installation is best done after road construction).
- 7) Building permits. No building permit will be issued until: proof that the items below have all been recorded.
- 8) Erosion and sedimentation. All erosion and sedimentation control structures alongside the road improvements shall remain in place and be maintained until vegetation is established and the ground surface is stabilized.
- 9) Fire Access. Access into the site for fire apparatus must be maintained at all times during the construction process. This is the sole responsibility of the

applicant/developer to maintain this access. Please contact the Fire Department at 862-1426 with any questions about access requirements.

- 10) Variance. A variance was granted to this application on April 8, 2014 to be exempted from the Conservation Subdivision requirements.
- 11) Shared driveway improvements. The buyer of the new front lot is responsible for construction of improvements to the shared driveway. The shared driveway shall be satisfactorily completed prior to issuance of a certificate of occupancy for any building on the front lot. An appropriate surety, to ensure either completion of the improvements or reclamation of the driveway should the improvements not be completed, shall be placed with the Planning Department prior to issuance of a building permit. The amount shall be approved by the Department of Public Works and the Town Business Manager shall approve the form of surety.
- 12) Building permit and recording. No building permits on the new lot shall be approved until there is proof of the items below having been recorded at the Registry of Deeds.
- 13) Waivers. This approval includes the following waivers: a) from the Conservation Subdivision requirements (This was granted because this subdivision is not a conservation subdivision); b) from Subsection 9.03 A. of the Subdivision Regulations which limits access to private driveways to 2 lots (This was granted due to the constraints of the land requiring access via the private driveway to 3 lots); and c) from the requirement for a 20 foot wide paved road in the Road Construction Regulations (This was granted since Edgewood Road is an existing Class 6 road and the expected amount of traffic can be supported with the additional gravel).
- 14) Street sign. A street sign, if required and as approved by the Department of Public Works, bearing the name of the approved street name, above, shall be installed prior to issuance of a certificate of occupancy for any of the three lots.
- 15) Recording. **a)** The plans (all three pages, including the subdivision plan, the shared driveway plan, and the driveway details, except for any pages which the Registry might not accept), **b)** the deed conveying the land within the boundary line adjustment, **c)** this notice of decision (per RSA 676:3 III), **d)** all easements/restrictions/deeds, and **e)** the indemnification form (above) 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.
- 16) 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, referring violations to other agencies, and calling of bonds.

- 17) Execution. The project must be executed exactly as specified in the approved application package unless modifications are approved by the Town.
- 18) 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.
- 19) 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.
- 20) Findings of fact. As part of this review and approval the Durham Planning Board finds the following: **A)** The applicant submitted an application, supporting documents, and plans for the project; **B)** On July 23, 2014, the Planning Board accepted the application as complete; **C)** The Planning Board held one or more public hearing(s) on the application; **D)** The applicant revised and updated the plans and other documentation numerous times pursuant to comments from the Planning Board, public, and Technical Review Group, and other Town boards and committees; **E)** The Planning Board held a site walk on August 28, 2014; **F)** 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 (except where waivers or variances may have been granted); **G)** This project is considered to not be a Development of Regional Impact; **H)** The Planning Board duly approved the application as stated herein; **I)** Substantial records are maintained of the process and documentation submitted in the Planning Department. A record of documentation and a timeline of the project will be prepared as needed; **J)** Zoning Compliance. This application complies with zoning requirements in terms of lot area, frontage, and other requirements. **K)** The Zoning Administrator confirmed that the 100 foot frontage requirement may be met using the state right of way; **L)** After significant discussion by the Planning Board and the Technical Review Group it was determined that this subdivision is reasonable and appropriate including the proposed improvements to the Class 6 portion of Edgewood Road and the creation of a shared driveway to access three new lots. This support is based in part upon the size of the subject lot and the intensity of development that might otherwise occur there; **M)** The developer sought to negotiate an arrangement with the owners of the existing lots that take access off this section of Edgewood Road for them to participate in maintenance of the Class 6 portion of the road, but he was not able to secure such an arrangement. Therefore, this subdivision imposes the maintenance requirements upon the owners of the three new lots.

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Signature of applicant

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date

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Printed name of applicant

\_\_\_\_\_  
Signature for County Line Holdings, LLC

\_\_\_\_\_  
date

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Printed name for County Line Holdings, LLC

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Signature for Mark Morong 1991 Trust

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date

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Printed name for Mark Morong 1991 Trust

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Signature of Planning Board Chair

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date

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Printed name of Planning Board Chair