

March 25, 2015

Dear Members of the Durham Planning Board:

The Mill Pond Center property was once a vibrant Center for the Arts that served hundreds of families every week. Lew & Judy Roberts owned and operated The Mill Pond Center for nearly two decades. Classes in dance, music, art, and theatre were available for residents of all ages. There were also performances and exhibits open to the public. The Smith Tavern (the house) is one of oldest buildings in Durham, having been built 1686, 329 years ago. It is one of Durham's forgotten gems.

To some, the subdivision plan before you may seem harmless enough. Many would argue "what difference does it make if we allow one more modest single-family home along our gateway in our historic district?" Let me remind you that as a community, we have done a poor job anticipating some of the outcomes of our decisions and approvals. The learning curve is steep. It is easy to make assumptions.

I imagine many of us are envisioning a small Broth Hill-type home built on this new front lot. Do members of The Board understand that in approving this single lot, they are opening the door to the following permitted (*by right*) uses: single-family with accessory apartment, bed and breakfast, elderly single-family, duplex, and multi-unit housing, adult daycare center, childcare center, nursery school or preschool? Please note that with a lot that is 115,465 sq. ft. and our elderly bonus, a developer could build a 10- or 11-unit elderly multi-unit building, approximately 45 feet high (to the peak) in our Historic District. With CU, one could build an eldercare or religious facility. Also permitted by right: a personal wireless service facility, off street parking lot to accommodate a first class home occupation or any other allowed use, and surface parking.

Furthermore, beyond the impact to our Historic District gateway, carving off a building lot in this particular location promises to severely reduce the chances of the former Mill Pond Center buildings ever again being used as a community arts/recreation center or serving as any number of currently allowed uses that could serve the community including: elderly housing multi-unit, eldercare facility, adult daycare center, childcare center, nursery school or preschool, bed and breakfast, recreational playing fields, religious facility, and governmental facility. Note that all of these uses carry with them the potential for significant traffic.

A critical key feature of the current configuration of this subdivision plan is its *shared driveway that sits on the property of the front lot*. Our Code Enforcement Officer has acknowledged that the proposed configuration "is a lawsuit waiting to happen."

With the only ingress and egress to the rear lot being the shared driveway, this subdivision plan not only creates the potential for conflict and legal disputes over use of the shared driveway between neighbors, but also will result in diminution of property values of the adjacent (rear) lot. The shared driveway will result in limiting potential uses of the back lot to avoid conflict and thus reducing the number of potential buyers. Given the unique nature of this property with its large structures and large parking area in the back, and the anticipated costs of repairs, it is unlikely that someone looking to use the property for a low-traffic single-family residence would buy this particular property unless they have plans to utilize the buildings. At the same time, anyone interested in running a business out of the former Mill Pond Center or taking advantage of any number of permitted uses (noted above), will think twice about having the only access go through someone else's property. Sadly, this could result in the continued deterioration of one of the oldest buildings in Durham, our historic Smith Tavern.

Approving this plan epitomizes poor planning. It invites conflict between neighbors and potential lawsuits with the town. It is likely to diminish the property values of the adjacent (rear) lot by practically speaking reducing potential uses. It puts into jeopardy the care and upkeep of one of Durham's oldest gems. Finally, it promises to diminish the character of our Historic District gateway.

Per our Zoning Ordinance, the Planning Board has an obligation to protect not only the "health, safety, convenience, and general welfare" of residents, but also "to protect natural and scenic resources from degradation" and "to preserve historic sites and structures." This plan does none of the above.

Since this property falls within the Durham Historic District, I trust that you will forward this proposal to the HDC for review *prior to approval*. Keep in mind that under Article IV of our Zoning Ordinance, it states: "Where a provision of this chapter differs from that prescribed by any other applicable statute, ordinance or regulation, that provision which imposes the greater restriction or the higher standard shall govern." I would argue that because this subdivision lies in our Historic District, the HDC should make the final determination.

Should the PB understand the full implications of approving this plan, consider that you are being asked to approve two waivers. You are under no obligation to approve these waivers. If the waivers are denied, the applicant has every right to go to the ZBA for a variance, which would then invite a broader discussion of a wider range of issues. To grant a variance, the ZBA must consider diminution of property values of surrounding properties, the spirit of the ordinances, and public interest. Given that we are talking about one of the oldest buildings in Durham, these should all be part of the discussion.

Finally, if the Planning Board decides to ignore my pleas to reject this subdivision for the reasons stated above, and if the Board moves forward with approval, I urge that you direct our Planner to put stronger, clearer language in the easement notes.

Given the potential for conflict and lawsuits against the Town, *this is a critical detail that must not be overlooked.*

Currently our Planner has suggested adding the following note to the subdivision plan Note 13: "The access easement allows for a potential broad range of uses on the rear lot. The terms of the easement, as approved and as recorded herein may not be changed without the express approval of the Durham Planning Board." The sentence regarding potential uses is too vague to properly notify prospective buyers of what they are buying. It would be more accurate to revise that first sentence to read:

"The access easement allows for a potential broad range of commercial and residential uses on the rear lot, including but not limited to single family residence, elderly single family, duplex and multi-unit housing, eldercare facility, adult daycare center, childcare center, nursery school or preschool, bed and breakfast, recreational playing fields, forestry and temporary sawmill, religious facility, and governmental facility."

It would be irresponsible to the Town and future buyers not to clearly state the realities of what this particular shared driveway could mean to future owners of the front lot and shared driveway.

In closing, given the sensitive location of this proposed lot along our gateway in our Historic District and the unique nature of the rear lot, I hope this proposal gets the scrutiny it deserves. I hope that members of the Planning Board honor the importance of coordination with the HDC as well as consider the value of a broader discussion at the ZBA. Thank you for your thoughtful consideration of these concerns.

Sincerely,



Beth Olshansky
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