

July 11, 2019

RE: Potential construction of Gerrish Drive Extension
to access Michael Mulhern property

Dear Members of the Durham Planning Board,

In 1983, my husband Andrew Merton and I bought the last lot available in the Gerrish Drive-Ambler Way subdivision. Initially we were surprised that the biggest and most private lot in this well-established neighborhood had not been built on. Our first visit to the lot with realtor Don Thompson was cursory because getting onto the site from the road required slogging through spongy and muddy ground. On our next visit we wore boots and saw there was enough high ground in the middle of the lot to accommodate a house.

Eventually the reasons this lot hadn't been built upon became clearer. Located in a right-angle gully at the bottom of two hills, it was the lowest spot in the neighborhood and, thus, received the drainage from both Ambler Way and Gerrish Drive. The map of the subdivision showed that, in addition to the abundance of wetland – on all four sides -- this lot was land-locked. Situated in the corner where Ambler Way becomes Gerrish Drive, it had no road frontage except along a short spur, designated on the subdivision map as "Future Street," extending from Gerrish Drive. This Future Street did not exist in 1983, nor does it now, except on paper.

"Don't worry," said Thompson. "No road will ever be built there because it's all wetlands." He assured us the town would not prevent us from cutting a driveway across a corner of the Future Street for access to a town-approved building lot. He was right. Four years after we bought the lot, our building permit sailed through the process, no questions asked. The septic system permit was another story. More about that later.

Our driveway construction required bringing in enough fill to raise the grade to Gerrish Drive by as much as four feet and installing a culvert. When our next-door neighbor, John Lewis, saw this happening, he worried that our driveway might create a dam, causing drainage onto his property from farther up the hill of Gerrish Drive and into a ditch across his front lawn to pool and spread across his lawn. He asked if we would be amenable to the extending of that ditch to feed into our culvert. We agreed this would be advantageous to both properties, and the ditch to the culvert was dug.

Even with this drainage mitigation, the low land between the Lewis property and ours becomes a pond during years of heavy snows followed by a sudden spring thaw. There have been times when that pond almost reaches the height of our driveway and threatens to flow across it – and worse, yet, freeze in place.

As for the drainage brook from Ambler that flows across the entrance to Future Street (now referred to as Gerrish Drive Extension), in the years we've lived on this lot, on at least three occasions cars have had to be hauled out by tow trucks from the four-foot drop into that brook when drivers failed to negotiate the curve from Gerrish onto Ambler. In other words, the existing grade of Future Street now and at the time it was deeded to the town is four feet below the level of Gerrish Drive. During spring melt or heavy rains, the water level in that brook can be as high as three feet.

In short, the area designated on various town maps as Future Street or Gerrish Drive Extension lies directly on the path of two active drainage brooks, one flowing down from Gerrish Drive, the other flowing not only from the lots along Ambler Way that abut the Mulhern property but also from drainage flowing into a culvert under Ambler Way from lots on the opposite side of the street from the Mulhern abutters. These brooks then join a much larger stream on the northeast side of our lot that empties into Gerrish Brook, which flows under Route 108, becoming a contributor to the Great Bay watershed .

Recently I spent an afternoon at the town planning office researching the history of this subdivision. It was constructed by local developer Walter Cheney, now deceased. Drainage was an issue from the start. In January 1972 the Durham Planning Board granted the subdivision plan **conditional approval**. Because of the high water table in the subdivision, septic systems for each lot had to meet six conditions regarding fill and depth of the leach field. (We had to submit three septic plans before finally getting an approval.) In 1973, when George Crombie, assistant director of public works, inspected the first stage of the road serving the subdivision, he found improperly installed culverts "settling" and "filling in with material." In his report to Durham DPW Director Henry LeClair, Crombie said these failing culverts "should be dug up and put back on a firm bed ..." The remainder of Cheney's bond for this road construction was withheld until the culvert problems and a poorly installed fire hydrant were rectified.

Three months after the subdivision approval, Cheney deeded the Future Street to the town. The developer characterized this as a goodwill gesture to provide access to the large stretch of land abutting all the lots on the east side of Ambler Way. It is doubtful any planning board member ever visited the site of the Future Street to ascertain what the town was getting with this "gift." Such an inspection would have sparked the

realization of the extensive amount of fill and the system of culverts and other drainage diversion measures that would be needed to prevent such a road from causing flooding on five or six properties within the existing subdivision. It is also doubtful the town would have been willing to incur the cost of such construction, mitigation work, and maintenance of culverts, including periodic cleaning. (This is not meant as sarcasm or denigration of a past planning board. Planning board members are volunteers. None of them has the time or expertise to inspect every aspect of every property brought before them for consideration.)

The location of the Gerrish Drive Extension is not a **designated** wetland, although it meets all the criteria for a Wetland Conservation Overlay District (WCOD) as spelled out in Durham's zoning ordinance. Building the Gerrish Drive Extension would obstruct or alter the natural flow of surface water, causing considerable harm to existing developed properties.

If the planning board were to recognize the area as a WCOD, a conditional use permit for the construction of a road would have to meet the following standards specified in the zoning ordinance:

1. There is no alternative location on the parcel that is outside of the WCOD that is reasonably practical for the proposed use. [*There are **two** alternative rights of way to access the Mulhern property – one off Bagdad Road and the other off Route 108, neither of which intrude on wetlands.*]
2. The location, design, construction, and maintenance of the facilities will minimize any detrimental impact on the wetland, and mitigation activities will be undertaken to counterbalance any adverse impacts [*At the very least, a costly undertaking for a short span of road, especially given that alternative access roads exist.*]
3. Restoration activities will leave the site, as nearly as possible, in its existing condition and grade at the time of the application for the conditional use permit. [*The **existing condition is low with year-round running water in some places, and the existing grade is four feet below** the level of the road that the Gerrish Drive Extension would be connected to.*]

If the Gerrish Drive Extension were not in a wetland, I could not oppose it. As much as I treasure the privacy that the lack of such a road now affords me, embracing the "lifeboat" attitude for opposing change -- i.e. "I'm in the lifeboat, and I like it the way it is and don't want to let anyone else in" -- is counterproductive and will not hold up in a fair assessment of a proposed project.

Yes, extending Gerrish Drive into what is likely to be a new subdivision will increase traffic and noise in the Gerrish Drive neighborhood. But a property owner has the right to maximize the use of his or her property to the extent that it does not have a deleterious environmental impact on existing properties. During the several years my husband and I lived in Barrington before moving to Durham, I served on the planning board there. In the late 1970s and early 1980s I wrote the monthly newsletter of the Forum for New Hampshire's Future, an organization dedicated to encouraging and educating New Hampshire residents to create master plans and zoning ordinances – fairly suspect concepts at the time in the Live Free or Die state. Those experiences helped me appreciate the balance of rights and responsibilities incorporated in zoning and to understand that the most just way to deal with the inevitability of change is to guide and shape it to the benefit of as many people as possible.

That said, because of the damaging effect a Gerrish Drive Extension would have on a fragile, wet area and surrounding properties and because alternative access routes already exist, I strongly oppose such construction.

Thank you for your consideration.

Respectfully submitted,

Gail Kelley
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Durham, NH

Addendum January 6, 2020

Since the time I read and hand-delivered the above letter to the planning board at its July 11, 2019, meeting, circumstances regarding access to Michael and Martha Mulhern's proposed 16-acre subdivision have changed.

In the July 11 letter, I referred to an access right-of-way to the proposed subdivision that existed on Mulhern property at 91 Bagdad Road. This right-of-way did not traverse or encroach on a wetland. It is on dry ground.

However, after the July 11 planning board meeting, Mr. Mulhern sold the property at 91 Bagdad Road. In the process, he changed the deed of that property to include that right-of-way to the land he owns behind it. Thus, he gave up ownership of the right-of-way, eliminating it as a possible access to his proposed subdivision.

My July 11, 2019, letter also mentions an access possibility off Route 108. But at the December 11, 2019, planning board meeting, when the Mulhern subdivision proposal was submitted for public hearing, the engineer for the project, Mike Sievert, said this access was not feasible due to the steep incline and the presence of ledge. So, he claimed, the Gerrish Drive extension is the only option the Mulherns have.

In the 31 years my husband, Andrew Merton, and I have lived in the house we built on Gerrish Drive, the water table in our area has risen and dramatically increased the extent of the surrounding wetland. The area designated on the subdivision map as Future Street (now called Gerrish Drive Extension) used to be seasonably soggy ground, becoming deep muck only after heavy rains. Now that climate change has brought us more frequent heavy rains and wet snowfall, that area is almost always covered with surface water. The path our kids and the Lewis kids next door made through the brush between our two houses sometime in the 1990s has disappeared ... under water.

A site analysis of the Mulhern subdivision proposal submitted Nov. 19, 2019, by MJS Engineering, refers to the portion of the property within which the proposed Gerrish Drive Extension would lie as "a large wetland of approximately 4+ acres." It further states: "Poorly drained silty to clayey marine sediments occupy the wetlands with a narrow band of somewhat poorly drained soil around the perimeter." Because of this clayey soil, water is not readily absorbed here; instead, as we have witnessed over the past 30 years, it spreads out as it accumulates. This is also why dumping massive amounts of fill here for a roadbed is not a solution. The water has to go somewhere. Since it can't soak into the ground, it will spread away from the fill, increasing flooding of the driveway and front yard of the White property on Ambler Way and encroaching and eventually destroying at least two septic systems, namely ours and the Lewis's. In order to comply with strict regulations placed on septic systems in this subdivision, we had to bring in truckloads of fill to raise the mound where our system was installed. The system is at the maximum height that would enable it to function as a gravity-fed system. Raising it any higher would not only require tearing out and replacing the whole system but also installing a pump that relies on electricity to flush a toilet. This would be a pricey hardship to bear as a result of a town's refusal to acknowledge the existence of a wetland, especially after we had complied with town requirements when we

installed the system. Also a mound that high next our house would detract considerably from the attractiveness of our property and, thus, lower its value.

There's another issue with the Gerrish Drive extension proposal – one that has not come up yet. According to the town map of the Gerrish Drive/Ambler Way subdivision (accepted and approved by the Durham Planning Board Jan. 5, 1972), the large stream on the northeast border of our lot that traverses the proposed Gerrish Drive extension and flows into the Mulhern property **is bounded by a 25-foot permanent easement for sewer and drainage as well as a 15-foot construction easement.** Since that stream does not begin and end within our lot boundaries, presumably the easements around it also do not begin and end within our lot lines but were intended to follow the course of the stream. Surely these easements weren't meant to apply only to homeowners on Gerrish Drive and Ambler Way but not to anyone else, including the town.

So, it appears the town has two options: 1) acknowledge Mr. Mulhern's self-inflicted hardship when he eliminated a less problematic access into his subdivision, and abandon the idea of constructing a road through a wetland that will cause considerable harm to existing properties, or 2) build the road, violate the existing easements, and, to avoid causing harm to existing properties, also install sewer lines and better functioning drainage systems in the Gerrish Drive/Ambler Way subdivision, which were anticipated by those easements, put in effect in 1972.

Respectfully submitted,

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