

WCOD CUP Standards for Proposed Subdivision off Gerrish Drive

The following report was approved unanimously by the Durham Conservation Commission during its virtual meeting on March 22, 2021

The proposed Gerrish Drive subdivision is unlike any proposal that has come before the Conservation Commission in recent years. The proposal has many attractive features from an environmental perspective. The 'pocket neighborhood' concept strives to have a lower footprint than traditional single-family neighborhoods through a shared common space. The design includes designating an extensive undeveloped area as a permanent conservation easement and there is potential to install solar power on at least some of the dwellings. Apart from these environmental features, the development would diversify Durham's housing options, help keep pace with rising housing demand, and broaden the tax base.

At the same time, the proposal has generated considerable controversy. Some of the opposition is rooted in significant environmental impacts that would counterbalance its environmental benefits. Several acres of healthy forest would be cleared for buildings, roads, and common space, reducing carbon sequestration and habitat value in the area. Access to the site will require impacting or outright eliminating areas of wetland and adjacent wetland buffers at several locations. Residents in the Gerrish-Ambler neighborhood have voiced strong opposition to those environmental impacts, as well as the disturbance they expect from construction activity and increased traffic once the development is complete. Abutters have also argued that an alternative entryway from Bagdad Road needs to be considered as an alternative.

We want to be clear that we are not taking a position on the overall environmental trade-offs of the proposal or the merits of the Gerrish Drive versus Bagdad Road access options at this time. The recommendations that follow reflect a focused review of the proposal as presented under a strict interpretation of the four criteria for activities within the WCOD. Our recommendations do not represent an endorsement of the project overall or the Gerrish Drive access option specifically, nor does our highlighting these issues and concerns reflect opposition to the project or the Gerrish Drive access.

Conditional Use Permitting for Construction in the WCOD

1) ROW Wetland Crossing

1. There is no alternative location on the parcel that is outside of the WCOD that is reasonably practical for the proposed use;

Yes: The Conservation Commission is not endorsing the use of the ROW access.

The Conservation Commission determined that there is no viable access to the property that is outside of the WCOD. Based on strict reading of the standard, the ROW is the only access presented with this application, and there may be another access.

2. The amount of soil disturbance will be the minimum necessary for the construction and operation of the facilities [as determined by the Planning Board]:

Yes: The strict reading of this standard suggests that there should be a pre-determination by the Planning Board. The soil disturbance will be significant, but will be the “minimum necessary” for a 20-foot roadway as required by the Planning Board.

3. 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;

Yes: The strict reading of this standard includes determining that the “location...will minimize detrimental impact...” The location set by this application may not be the location that will have the minimum impact, as explained in Standard #1, and is not necessarily endorsed by the Conservation Commission. If the location within the ROW is determined to be the only viable location, the Conservation Commission determined that the location, along with the “design, construction, and maintenance of the facilities will minimize any detrimental impact on the wetland” in the ROW. This conclusion assumes that a raised roadway or bridge would be cost-prohibitive, as advised by the applicant’s engineer. We note that the proposed design does not include any substantial mitigation of these impacts in terms of replacing certain wetland functions, however such mitigation might not be practical at this site. We also note that designation of the conservation easement on the site and installation of the sewer line will provide valuable environmental benefits.

4. Restoration activities will leave the site, as nearly as possible, in its existing condition and grade at the time of application for the Conditional Use Permit.

Yes: The Conservation Commission does not support the destruction of wetlands, but their destruction is a necessary part of this application. The plan does not leave the site in its existing condition and grade at the time of application for the Conditional Use Permit. **It does leave the site as nearly as possible in condition and grade given the proposal reviewed by the Commission.**

2) Ravine Crossing

1. There is no alternative location on the parcel that is outside of the WCOD that is reasonably practical for the proposed use;

Yes: The Conservation Commission determined that there is no viable access to the property that is outside of the WCOD. If the ROW is the accepted access, then this is the appropriate crossing location. **The Conservation Commission is not necessarily endorsing the use of the ROW access.**

2. The amount of soil disturbance will be the minimum necessary for the construction and operation of the facilities [as determined by the Planning Board].

Yes: This is a ravine with a stream, where a bridge might be more appropriate. However, the designer explained that the culvert will be large and function like a bridge and that a bridge would cost-prohibitive.

3. 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;

Yes: See #2. Stormwater on the road over the ravine will be captured and enter a stormwater treatment system.

4. Restoration activities will leave the site, as nearly as possible, in its existing condition and grade at the time of application for the Conditional Use Permit.

Yes: See #2.

3. Road Crossing and Fill of Finger of Wetland

1. There is no alternative location on the parcel that is outside of the WCOD that is reasonably practical for the proposed use;

No: While we feel that the proposed location of the road is acceptable and a tolerable impact, the filling of adjacent wetland primarily to reduce the extent of the wetland buffer is not approvable. The Conservation Commission agrees with the applicant's wetland scientist that this is a low value wetland. We also agree with the applicant's engineer that the proposed design will achieve comparable drainage as the current wetland, which is the primary function of this particular wetland. This conclusion is primarily due to technical compliance with the ordinance rather than any substantive environmental issue.

2. The amount of soil disturbance will be the minimum necessary for the construction and operation of the facilities [as determined by the Planning Board];

No: See #1.

3. 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;

No: See #1.

4. Restoration activities will leave the site, as nearly as possible, in its existing condition and grade at the time of application for the Conditional Use Permit.

No: See #1.

4. Activities in the Wetland Buffer

1. There is no alternative location on the parcel that is outside of the WCOD that is reasonably practical for the proposed use;

Yes, with the exception of units #13 and #14, which are within the buffer of the small finger wetland. Otherwise, given the rest of the plan, the proposed uses of the wetland buffer are acceptable.

2. The amount of soil disturbance will be the minimum necessary for the construction and operation of the facilities [as determined by the Planning Board];

Yes.

3. 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;

Yes: The use of the WCOD for stormwater treatment is functionally necessary for the proposed plan. Roadway impacts are mitigated by stormwater management.

4. Restoration activities will leave the site, as nearly as possible, in its existing condition and grade at the time of application for the Conditional Use Permit.

Yes.