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Please Respond to the Exeter Office

January 21, 2021

VIA ELECTRONIC MAIL (mbehrendt@ci.durham.nh.us)

Paul Rasmussen, Chair
Durham Planning Board
8 Newmarket Road
Durham, New Hampshire 03824-2898

Re: Michael and Martha Mulhern
91 Bagdad Road, Durham, New Hampshire
Subdivision Application / Conditional Use Application

Dear Chair Rasmussen and Board Members:

During the public hearing on January 13, 2021 on this application, I explained some of the history of the ownership of the Mulhern property, specifically the portion for which Bagdad Road serves as the access. While I intended to make additional remarks following the public comment section, it seemed prudent to provide the comments in writing due to the late hour. This correspondence provides such comments.

Your attorney advised you to review and act only on the application in front of you and that the Bagdad Road access is not an issue for this Board. I agree and further advise that the legal ability to use the existing driveway and fashion it into a road is non-existent without obtaining the consent from the two other affected parties, the Nieves and the Imbries, and both parties indicate in correspondence submitted under separate cover that they would not give such consent.

To further clarify the history, the reason the Mulherns conveyed the fee interest in the driveway to the Imbries was based upon their desire to sell 93 Bagdad Road. The Purchase and Sale Agreement they entered into with the Imbries referenced a deed which included the fee interest in the driveway. As previously explained, it was only during the preparation for the sale that the title defect was discovered by title examiners. The title insurance company that provided coverage to the Mulherns when the entire parcel was purchased in 2005 stepped in to fashion a solution to ensure good title and enable the sale to proceed. The solution consisted of having the Nieves retain the access interest that they needed in the driveway, but release the fee interest for which they had no need. This would allow the Imbrie sale to go through.

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Reading this history, together with the comments of Marti Mulhern submitted under separate cover, it is clear that the Mulherns have not in any way created a self-made hardship. In fact, they have acted in good faith by early on doing due diligence on how to access land to immediately build a house, as well as how to access the back land for possible future development. In short, the Planning Board can and should focus on the application using Gerrish Road Extension and make a determination that the proposal meets the criteria set forth in the conditional use permit regulations.

Very truly yours,

DONAHUE, TUCKER & CIANDELLA, PLLC



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SCS/lab/jh

cc: Michael Mulhern and Martha Mulhern
MJS Engineering, P.C.