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April 26, 2021

Lorne Parnell, Vice Chair
Durham Planning Board
8 Newmarket Road
Durham, NH 03824

RETIRED
MICHAEL J. DONAHUE
CHARLES F. TUCKER
ROBERT D. CIANDELLA
NICHOLAS R. AESCHLIMAN

Re: Mulhern Conditional Use Permit Application

Dear Chair Parnell and Members of the Board:

My understanding is that on April 28, 2021, the Planning Board is scheduled to consider the eight criteria set forth in Section 175-23 (C) of the Zoning Ordinance. The Planning Board previously found that the applicant satisfied the criteria under Section 175-62 (B) which pertain specifically to relief sought in the WCOD.

Before considering the eight general criteria identified in Section 175-23 (C), the Board should be aware of the following points. One, the relief sought pertains to the construction of a roadway and related features within the WCOD, and not to use issues per se, since the proposed residential use, and required access roads are an allowed use. Thus, the analysis of the eight criteria should be done by looking solely at the nature of the impact of the activity within the WCOD and not the project as a whole. Two, as the Town Attorney has previously advised, the Planning Board must review the conditional use permit request based solely on the proposal presented, and not on some alternative proposal which might hypothetically be presented. Three, at one prior meeting, it was suggested that the language in general criteria two and three of Section 175-23(C) which

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might touch on "location" of the road should be the platform upon which the Planning Board can once again consider an alternative route into the proposed subdivision. To the extent that this concern might still be advanced before the Planning Board, be aware that the Planning Board is already on record as saying that the proposed roadway satisfies the concerns related to its location in the WCOD and therefore any further discussion of this issue is moot. Further, the language within criteria two and three asks the Board to consider impacts to the surrounding environment due to intensity and nature of use; it does not ask the Board to consider alternative locations. The Board cannot now revisit an issue upon which they have previously decided.

We urge the Board to render a decision on the question of whether the conditional use permit satisfies the eight general criteria, bearing in mind that the relief request is based on the WCOD location of the road and bearing in mind that the Board has already voted on the four WCOD criteria in Section 175-62(B).

Please contact me if you have any questions.

Very truly yours,
DONANUE, TUCKER & CIANDELLA, PLLC



Sharon Cuddy Somers
SCS/sac

cc: Michael and Martha Mulhern

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