



TOWN OF DURHAM
8 NEWMARKET RD
DURHAM, NH 03824-2898
603/868-8064
www.ci.durham.nh.us

Town Planner's Review
Wednesday, January 13, 2021

XI. **Public Hearing - Subdivision off Gerrish Drive**. Parcel at 91 Bagdad Road (address). Formal application for conservation subdivision for single family and duplex houses (15 units total) on 16-acre lot off Gerrish Drive including conditional use for wetland crossings. Marti and Michael Mulhern, property owners. Mike Sievert, engineer. Robbi Woodburn, Landscape Architect. Map 10, Lot 8-6. Residence B District.

- I recommend that the board hold the public hearing, discuss the project, and continue the review to February 10. (The January 27 agenda includes 19 Main Street, Mill Plaza, and some other items.)

Please note the following:

Process

- 1) **Site walk**. The Planning Board is holding another site walk on Wednesday, January 13 at 12:00 noon. We will meet at the curve of Gerrish Drive and Ambler Way. The board will decide then where to walk.
- 2) **Outside Consultants**. *I will provide a recommendation for the scope of an outside review by the meeting on Wednesday.* I suggested earlier setting up a committee to review this but now think this can be done in an easier manner. I am speaking with a few professionals now, including Public Works, for their guidance. As I mentioned in an email earlier, any outside review must be reasonable, grounded in the regulations and ordinance, precise, in scale with and comparable with that for similar types of projects, and focused on issues that the board needs to look at. The consultant(s) would work for the Town but be paid by the applicant. I believe the Conservation Commission cannot require an outside consultant, unlike the Planning Board, but the commission can request it of the applicant or the Planning Board. The commission's purview is similar or narrower than that of the board so hopefully the board and commission would agree on the proper scope.

Note that NHDES will conduct a more demanding review of the drainage system than that required by the Town as part of the Alteration of Terrain permit. The applicant now must provide an analysis of wildlife habitat as part of that permit. They should be able to provide at least a preliminary part of the analysis for the Planning Board.

My sense now is that we should hire one engineer and one wetland scientist. Here is my preliminary view of what should be reviewed:

- Drainage plan for conformance with regulations and MS4 requirements if requested by Public Works.
 - Close examination of the drainage and structures related to the large wetland crossing
 - Review of the wetland analysis
 - Close review of the first wetland crossing and to a lesser extent for the second crossing.
 - Review of activity proposed for the buffer and impacts upon the wetlands
 - Review of WCOD wetland criteria 2), 3), and 4). The first criterion regarding the practicality of another route is one for the Planning Board to evaluate.
 - Some short perspective on the overall project and it's place in the larger setting
- 3) Extension for review. The application was accepted as complete on December 16 and is now a formal application. The 65-day timeframe expires after the February 10 meeting so the applicant should provide an extension or waiver by that meeting. Alternatively, the Planning Board could request an extension of 90 days from the Town Council.
 - 4) Revisions. With large complex projects we find that it is helpful for the board to conduct its review including taking comments at the public hearing, and then to provide a set of suggested revisions to the plans for each pertinent issue. The applicant then submits one revised set of plans for the final deliberations (There are frequently additional minor items to be changed as precedent conditions).
 - 5) Madbury Planning Board. The portion of the road located in Madbury will need to be approved by the Madbury Planning Board. An application should be submitted as soon as possible. Mike Sievert has been in contact with the board's chair. The Madbury board should look at the overall plan, as well, to see if there are other issues impacting Madbury.
 - 6) TRG Reviews. We will need final signoffs from the various Town departments, including Public Works for roads, utilities, and stormwater (They recommend an outside consultant review the stormwater plan). The project has been reviewed by the TRG on two occasions.

Roads

- 7) Road. The sense of the road at this point is that it be entirely private, starting at the junction with Gerrish Drive. It would be maintained by a Homeowners Association. The interior loop road would be 18 feet paved with a 1 foot+ gravel shoulder on each side. Whether it would be one way or two ways is not yet determined. The right of way in the existing spur is 50 feet wide. Mike Sievert said the right of way for the loop road would be 30 feet wide.

- 8) Private road. We would require that very prominent notes be placed on all deeds so that homeowners are well aware that the road is a private road without Town services.
- 9) Road name. Later on a road name will be needed and an addressing system.
- 10) Private driveways. Under Article XXI – Off Street Parking and the Public Works policy there are limits on the width of driveways for individual houses. Why are some of the driveways shown with pervious pavement but not others? Driveways must be single lane and may not exceed 10 feet in width except where needed to provide access into a wider garage.
- 11) Traffic. Information from Steve Pernaw, Traffic Engineer, is included in the narrative.
- 12) Road Standards. Some waivers may be needed from the Durham Road Construction Regulations. The regulations apply to private roads but are more oriented to Town roads so granting waivers may be appropriate, plus these standards are old and can be excessive. The minimum right of way is 50 feet. The minimum shoulder width is 4 feet. The maximum slope is 8%. The minimum tangent length between reverse curves is 75 feet. The minimum centerline curve radius is 180 feet for a design speed of 20 mph and 280 feet for a design speed of 25 mph.
- 13) Construction management plan. A plan will be needed later. Phasing, erosion and sedimentation control, tree protection, noise abatement, hours, truck traffic, etc.
- 14) Gerrish Drive Road. Once again, the Town Council approved use of the Town right of way (“Future Street”) at a meeting on January 13 with this motion: “Councilor Howland MOVED that without endorsing this project, the Town Council approves the applicants’ request to utilize the Town right of way at the end of Gerrish Drive for a new road, including drainage structures and any attendant utilities to access their property for a subdivision, subject to approvals, conditions of the Planning Board, NHDES, and other applicable government bodies in accord with Town regulations, local ordinances and state law.” Councilor Corrow SECONDED the motion and it PASSED 5-1, with Councilor Burton voting against it.”
- 15) Access via Bagdad Road. See last item below.

Wetlands and Stormwater

- 16) Wetlands. Mike Sievert is trying to keep the wetland disturbance to under 10,000 square feet. I believe that this would be a minimum impact application to NHDES. Mark West will provide additional information about the buffers. Mark West should be available to talk to the board at the meeting this Wednesday.
- 17) Conditional Use. A conditional use will be needed for the three wetland crossings and activity within the wetland buffer. I suggest that the board have a preliminary discussion about the eight conditional use criteria at an upcoming meeting in order that potential issues are raised soon rather than during final deliberations. The application addresses the eight criteria.

- 18) Stormwater management. The plan is quite complex and will need to be reviewed carefully. A detailed report is submitted. As stated here, use of an outside consultant is probably needed. I will speak with Public Works to see what kind of review, if any, they can do.
- 19) Conditional use criteria. It would be helpful before closing this phase to have a discussion of the 8 general and 4 specific conditional use criteria and the overall plan to get a sense of how the project stands now and the issues and challenges that will need to be addressed in the next formal phase. Before doing that, it would be helpful to discuss these criteria with the Town Attorney for guidance in applying them to the project. Note that the 8 general criteria apply to work proposed in the wetland and buffers not to the project in general (For example, criterion 8 refers to fiscal impacts. It is unlikely that building within a buffer would have a fiscal impact so this criterion would probably be not applicable, though the project itself might have some fiscal impact).
- 1. There is no alternative location on the parcel that is outside of the WCOD that is reasonably practical for the proposed use;*
 - 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;*
 - 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; and*
 - 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.*
- 20) Conservation Commission. At the appropriate time, the Conservation Commission will make a recommendation to the Planning Board on the 4 specific criteria (not the 8 general criteria). While the mission of the commission is certainly to protect environmental resources, the Town Attorney said to me that, in its review of the conditional uses it must be guided by the language of the four criteria. Regarding the overall subdivision the commission may offer any comments that it wishes.
- 21) Drainage at Gerrish and Ambler. Public Works has spoken with Mike Sievert about potentially reconfiguring some of the drainage patterns in the area. The area being discussed is upgradient from the subject project and an existing condition so this would probably not be required of the applicant. But there might be some improvements - whether done by the Town, the applicant, or both - that would be in the interest of all parties.
- 22) Activity within wetland buffer. The proposal includes placing the southerly private road, some individual driveways, and drainage structures within the 75 foot buffer (no houses are within the buffer). These uses are allowed by conditional use. Keep in mind that the purpose of the wetland buffer is to protect the wetland from adverse impacts of nearby development. Typically, there is sheet flow off nearby development and the 75 foot buffer is thus needed for significant treatment. *If Mike Sievert can demonstrate that*

the runoff will be effectively treated before entering the wetland then I recommend this conditional use be approved.

- 23) NHDES. The New Hampshire Division of Environmental Services will review the application to fill the wetland in the Town right of way, the second crossing on the parcel (if the wetland is filled or altered), and the wetland finger. NHDES will also review the stormwater management plan as part of the Alteration of Terrain application (applicable to projects that disturb more than 100,000 square feet of land). The requirements for the AOT are demanding. Any approval by the board would be conditioned on the NHDES approvals. Mike Sievert has met with NHDES. He said that he is keeping NHDES informed of the project as it moves along. The Town's review, of course, is entirely separate from the NHDES review.

Utilities

- 24) Water service. There will be a connection to Town water. It must be determined if there is sufficient pressure in the system now.
- 25) Trash pickup. The Town will not pick up trash on a private road so homeowners will need to take their trash to the Town dump or a private hauler would need to be hired. Use of a dumpster on site is probably not recommended.
- 26) Utilities. Final locations of water, sewer, and electric lines will need to be shown. These are depicted now and some adjustments may be made.
- 27) Sewer. The applicant plans to extend a pressure sewer line down Gerrish Drive. Abutters could then tie into this line in the future. The question is whether this line can then connect to the existing manhole in Sumac Lane off Canney Road or if it will need to be extended up Canney Road to a manhole on Bagdad Road. Mike Sievert is working with Public Works to determine the condition of the line on Sumac Lane. That line extends from Sumac Lane and then goes cross country to Bucks Hill Road then past the high school. Again, this line would be different from a conventional sewer line in that the line would be pressurized and would accept only liquid. Property owners, including those on Gerrish Drive, would have a septic tank on their property for solids and a pump to send the effluent to the line. Presumably, stubs would be included in the line for adjacent homeowners on Gerrish Drive to tie in later.
- 28) Energy Checklist. The Subdivision Regulations require submission of the Energy Checklist. Some of the provisions, all of which are voluntary, will not apply. The applicant can consider if there is an approach for incorporating strategies for individual dwellings.
- 29) Fire Hydrants. Brendan O'Sullivan identified two locations for hydrants around the circle. Mike Sievert will make the adjustments.

General Design

- 30) Locations of houses. The plans show approximate locations for the houses. Some adjustments may be worth looking at to provide for the most harmonious locations and placements of the houses. We will need to incorporate language setting parameters for

how much flexibility there is in placement. The front setbacks are flexible and must be approved by the board. The houses are now shown generally 15 feet from the road right of way line. Garage doors must be set back at least two feet beyond the front face of the house per 175-107 I.3. The same applies to accessory buildings. It appears that there is a deck or porch on unit 12 that encroaches into the 20 foot side setback of the parcel. 20 feet is shown as the side setback. A few houses look closer than that.

- 31) Open space. Final provisions for ownership and management of the open space as specified in 9.09 and for a stewardship account or fund as specified in 175-107 H.5. will need to be provided. The applicant can decide whether or not to allow outside parties to walk on the trails and open space. We will need a construction detail for the trails.
- 32) Trails and Open Space. A memo regarding the ownership and management of the open space is submitted. A detailed plan will be needed in accordance with 7.03 F. Some of these items can be submitted after approval.
- 33) Ownership of land. The applicant will need to provide specific information about how the land, limited land under the dwellings, and the dwellings themselves will be owned and managed since there will not be individual lots for each dwelling.
- 34) Landscaping. A landscaping plan is submitted which includes plantings along the loop road, inside the green, for screening of the White property along the new road, and around the drainage structures.
- 35) House designs. Marti Mulhern, the applicant, has been looking at various house designs. It is debatable how much this is in the purview of the Planning Board. For a project proposed as a pocket neighborhood on a fairly tight overall footprint it is appropriate to provide an overall plan for placement of houses and perhaps house sizes and orientation. A general template for house designs would reinforce the plan recognizing that implementing house designs should be left to the applicant. One key element of the plan is the interior green space and walking path. We have discussed including house designs that would be welcoming to neighbors along the interior walking path with use of patios, decks, porches, and a rear entrance.
- 36) General plan. There are numerous complex components to preparing a conservation subdivision plan. The general plan (apart from the ongoing questions about wetlands and wetland buffers) appears to meet the requirements (apart from the conditional use which involves more discretion for the Planning Board). Substantial open space will be preserved in perpetuity as required in the regulations. The building area seems to be located in an appropriate section of the parcel.

Miscellaneous

- 37) Existing house. There is an existing house on the subject parcel at the southerly end, where the applicant lives now, that is accessed via an easement from Bagdad Road. I would encourage the applicant to apply for a variance (needed because the lot would have no frontage) now to subdivide that house from the main parcel. It would be simpler to organize the homeowners association without that house which is entirely separate from the proposed project. Plus, it would be less burdensome for the owners of

that house to have their own lot. A waiver will be needed to maintain the existing utilities for house above ground.

- 38) Playground. There is a playset owned by the Michael and Molly White that is located in the 50 foot right of way. This will need to be addressed.
- 39) Buffer to abutters. Appropriate buffers will be needed to the two adjacent houses. The landscaping plan shows plantings
- 40) Impact fees. A waiver will be needed to exempt senior homeowners from paying the Town's school impact fees.
- 41) Senior Units. We will need to determine whether 100% or 80% of the units will be occupied by seniors. The density allowance may require more than 80%.
- 42) Development of Regional Impact. The board voted on June 10 that this was not a development of regional impact.
- 43) Other issues. What other general issues need to be discussed? What other information should be submitted?
- 44) Trees to be removed. Some have criticized the plan for the number of trees that would be removed to accommodate the road. Trees must be removed when a new road is installed. A Planning Board can specify changes in the location and layout of a road to preserve trees and proper erosion and sedimentation control must be incorporated but a subdivision cannot be denied because trees will be removed to accommodate the road.

Access

- 45) Access. There has been much discussion about using Bagdad Road for the access. The Town Attorney has stated that the Planning Board cannot require that another access be used and must evaluate the application as submitted. She believes the applicant would have a legal right to use the Bagdad Road access but notes that if the owner of the easement objected it is uncertain how a court might rule because of the vague language of the easement. I believe the only way this other access might warrant discussion is in terms of the first WCOD criterion:

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

Use of Bagdad Road would still be located within the WCOD as the larger wetland to the south would need to be crossed, though arguably there might be less impact (See photographs from Gail Kelley). However, it is questionable if that route would be "reasonably practical" since the applicant would need to go to court first for a determination or would likely face a court challenge later by the owner of the easement (who submitted a letter objecting to use of the easement for a road). The overall site is shown below including lots adjacent to the easement.

(See Tax Map on next page)

