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*Revised Conditional Use Application*  
*Prepared For*  
*Michael and Martha Mulhern*  
*Phase 3 Final Conservation Subdivision Application*  
*Tax Map 10 / Lot 8-6, 91 Bagdad Road*

January 20, 2021

*Conditional Use Permit Criteria;*

The following outlines how this project complies with the provisions of the general conditions for a Conditional Use Permit contained within Article VII, Section 175-23.C of the Town of Durham Zoning Ordinance and Article XIII, Section 175-62.B specific to the WCOD. The numbering below coincides with the applicable section.

The statements below demonstrate how this development project complies with the CUP criterion. The plans incorporate best management practices for the construction and thereby satisfy the CUP criterion.

Section 175-23.C

1. Site Suitability:

The three-step process for conservation subdivision is being followed to determine the most suitable location on the property. This process validates that the site is suitable for the proposed development pending the final local and state approval.

(a) *Adequate vehicular and pedestrian access for the intended use.* Both are being provided with the least possible impacts to the WCOD.

(b) *The availability of adequate public services to serve the intended use including emergency services, pedestrian facilities, schools and other municipal services.* Adequate emergency services can be provided, and access will meet all current fire department standards. Municipal water and sewer are close enough to the site that the design incorporates these services and provides future connection for the existing single family houses that do not currently have municipal sewer; there will be minimal impacts to the schools by this development; solid waste

will be handled by a private waste company and the homeowners can be included in the Town recycling program.

(c) *The absence of environmental constraints (floodplains, steep slope, etc.) or development of a plan to substantially mitigate the impacts of those constraints.* The environmental constraints have been identified throughout the conservation subdivision design process and this design provides the mitigation of those constraints. First and foremost, this design is clustering the development of the land on the least constrained portion of the parcel and we have chosen a development style that minimizes impacts to the land and enhances community involvement to care for the environment. The land area with the most constraints is being conserved as open space. Secondly, the design of the roadway that impacts the wetland and steep slopes is being designed to minimize and mitigate those impacts. The use of retaining walls to minimize fills, best management practices for stormwater and oversized culvert design for reduction in existing flooding issues and enhanced wildlife movement are part of the design. The stormwater collection/treatment system is classified by the NHDES as a best management practice incorporating infiltration/filtration and detention. The stormwater system will collect, treat, and improve the quality of the stormwater runoff and significantly reduce the peak flow discharged from the site. The landscape plan will enhance the disturbed areas within the WCOD.

(d) *The availability of appropriate utilities to serve the intended use including water, sewage disposal, stormwater disposal, electricity, and similar utilities.* The site is suitable because of the availability of appropriate utilities to serve the intended use available. The stormwater system will meet LID standards and provide collection, filtration, some infiltration, and detention.

2. External Impacts:

*The external impacts of the proposed use on the abutting properties and the neighborhood will be no greater than the impacts of adjacent existing uses or other uses permitted in the zone. This shall included but not be limited to traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare.*

- This unique conservation subdivision will not cause an adverse impact to abutting properties to a greater extent than any other existing residential use in the neighborhood. This property is surrounded by single family homes and woodland similarly to abutting properties in the neighborhood. This subdivision will not produce any additional odors, noise, vibrations, or fumes that do not currently exist in the neighborhood. The traffic generated by the proposed use, based on the traffic memo, will not have a greater impact than adjacent existing uses in the neighborhood.

*The location, nature, design, and height of the structure and its appurtenances, its scale with reference to its surroundings, and the nature and intensity of the use will have no adverse effect on the surrounding environment and will not discourage the appropriate and orderly development and use of the land and buildings in the neighborhood because:*

- The location and scale of this subdivision is controlled by the subdivision and zoning regulations, the constraints of the property and environmental concerns and the design and intensity of use will have no adverse effects on the surrounding environment. In fact, this unique design is better suited on this property than the existing standard subdivision adjacent to it because of the clustered design style

which minimizes disturbance, the land conservation, and the stormwater design system.

3. Character of the site development:

*The proposed layout and design of the site shall not be incompatible with the established character of the neighborhood and shall mitigate any external impacts of the use on the neighborhood. This shall include but not be limited to, the relationship of the building to the street, the amount, location, and screening of off street parking, the treatment of yards and setbacks, the buffering of adjacent properties, and provisions for vehicular and pedestrian access to and within the site.*

- The design is not incompatible with the established character of the neighborhood because it minimizes the impacts to the WCOD and incorporates the latest LID standards in stormwater collection and treatment to protect the wetland conservation district and downstream surface waters to a greater extent than existing adjacent neighborhoods.

4. Character of the buildings and structures:

*The design of any new buildings or structures and the modifications of existing buildings or structures on the site shall not be incompatible with the established character of the neighborhood. This shall include but not be limited to, the scale, height, and massing of the building or structure, the roof line, the architectural treatment of the front or street elevation, the location of the principal entrance, and the material and colors proposed to be used.*

- The design meets this requirement.

5. Preservation of natural, cultural, historic, and scenic resources:

*The proposed use of the site, including all related development activities, shall preserve identified natural, cultural, historic, and scenic resources on the site and shall not degrade such identified resources on abutting properties. This shall include, but not be limited to, identified wetlands, floodplains, significant wildlife habitat, stonewalls, mature tree lines, cemeteries, graveyards, designated historic buildings or sires, scenic views, and viewsheds.*

- This subdivision is specifically designed to preserve the resources that exist on the site, to the greatest extent possible. The highest value wetland and the wildlife habitat is being protected by putting 12 acres in conservation, clustering the development, and incorporating a stormwater treatment system into the design.

6. Impact on property values:

*The proposed development will not cause or contribute to a significant decline in property values of adjacent properties.*

- This subdivision design and the construction of the proposed residential development will not have a negative impact on adjacent property values because it fits with the character of the surrounding properties and protects the environment to a greater extent than the adjacent neighborhood.

7. Availability of Public Services and Facilities:

*Adequate and lawful facilities or arrangements for sewage disposal, solid waste disposal, water supply, utilities, drainage and other necessary public or private services, are approved or assured, to the end that the use will be capable of proper operation. In addition, it must be*

*determined that these services will not cause excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police protection, fire protection and schools.*

- This subdivision will not increase demand on any municipal services to any greater extent than existing subdivisions in the neighborhood.

8. Fiscal impacts

*The proposed use will not have a negative fiscal impact on the Town unless the planning board determines that there are other positive community impacts that off-set the negative fiscal aspects of the proposed use. The Planning Board's decision shall be based upon an analysis of the fiscal impact of the project on the town. The Planning board may commission, at the applicant's expense, an independent analysis of the fiscal impact of the project on the town.*

- On balance, this subdivision will produce significant tax dollars with minimal increase to municipal costs. The roadway is private, the extension of the utilities are paid for by the developer and the increase in school age children will be minimal. This subdivision will not be a negative fiscal impact to the town.

Section 175-62.B

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

The first two application phases of the conservation subdivision process defined the usable and unusable areas by preparing a site inventory map and analyzing the wetlands, buffers, soils, drainage, slopes woodland and wildlife components of the property. From this analysis, the proposed 3-acre area is the best suitable location for development on the parcel. Clustering the development in this location and placing the remaining land in conservation in perpetuity can adequately protect the most valuable natural resources.

Due to the position of the developable area between the steep slopes adjacent to the perennial stream and the highest value wetland, the impact to the wetland finger and the buffers are unavoidable. There is no other location on the parcel that will allow this type of development with an interior green space and exterior roadway that does not impact the WCOD.

There is only access that does not impact the WCOD is the ROW access from Route 108. This access ROW traverses very steep slopes, in excess of 30%, that prohibits the ability to construct a roadway; therefore, this access is not a reasonably practical option for the proposed use of this developable area.

The use of the Town Right of Way (ROW) from Gerrish Dr. and Ambler Way is the least impacting alternative for access to the developable area. The reason this access is the least impacting alternative is because it is the shortest distance from the public street to the developable area through the WCOD and requires the least amount of impervious surface for stormwater treatment. The wetland areas that are impacted by the access way include a lower value wetland off Gerrish Drive and an arch pipe span of a higher value stream leaving the stream channel in-tact.

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;*
  - The grading in the wetland areas and buffers has been designed to be the minimum required to meet all engineering and environmental standards. The access road from Gerrish Dr. and Ambler Way is being designed to the minimum grade to provide for culvert installation to maintain the existing surface water flow through the wetland and mitigate flooding potential on the adjacent properties. In addition, retaining walls are being used to minimize wetland impacts, reduce soil disturbance and reduce the removal of existing native vegetation. The crossing at the ravine utilizes an arch pipe without a bottom to minimize wetland impact, adequately pass the design storm without causing flooding or erosion and provide a biological connection for aquatic life. Grading in the buffer is required for road construction and stormwater treatment. The reason the buffer is being used for stormwater treatment, is it provides the most level area, and allows the best treatment prior to discharge into the wetland. The grading and soil disturbance has been minimized to the maximum extent possible by using the highest quality stormwater treatment basin at the lowest grade possible.
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;*
  - The stormwater treatment system has been located and designed to provide collection and treatment of the largest amount of runoff from impervious and disturbed areas as possible. The use of the gravel wetland treatment system provides the highest quality treatment to surface water runoff as replacement of the woodland buffer. This system will greatly minimize any detrimental impact on the wetland. Mitigation activities include minimizing soil disturbance, re-vegetation of the disturbed areas with native vegetation, maintenance of these systems and the conservation of 12 acres of woodland.
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;*
  - The grading of all improvements have been redesigned and minimized to the greatest extent possible based on engineering standards. Restoration of the buffer impacts includes re-vegetation with native plantings to preserve the existing conditions. This will allow the changes to be as nearly as possible to the existing condition and grade while providing for development of usable area on the property.

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely;

A handwritten signature in black ink that reads "Michael J. Sievert". The signature is written in a cursive, flowing style.

Michael J. Sievert PE  
MJS Engineering