

Jan. 15, 2021

To:

Durham Planning Board
Durham Conservation Commission
Todd Selig, Town Administrator
Michael Behrendt, Town Planner

From:

Andrew Merton, 11 Gerrish Dr., Durham

Re: Mulhern Proposed Development

Following is a summary or remarks I made at the Planning Board hearing on the Mulhern proposed development Jan. 14.

Re: **Applicable Zoning Regulations with which Mulhern Proposal Does Not Comply**

Article XIX -- Conservations Subdivisions

175-107

A. Purpose (5 purposes; #4 and #5 apply)

4. "Create continuous open spaces or 'greenways' by linking the common open spaces in adjoining subdivisions whenever possible." Gerrish wetland is the only adjoining open space between the Gerrish-Ambler subdivision and the proposed Mulhern subdivision. Destroying that wetland with a road and retaining walls needlessly cuts off the only linking open space between the two subdivisions.

5. "Minimize the impact of residential development on the Town, neighboring properties, and the natural environment. " Proposed access road MAXIMIZES the impact of this development on neighboring properties and the natural environment.

Article VII – Conditional Use Permits

175-23. Approval Criteria

C. Criteria Required for Consideration of a Conditional Use Permit (6 criteria; #2,5 &6 apply)

2. External impacts: “ 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, shall not have an adverse effect on the surrounding environment nor discourage the appropriate and orderly use of land in the neighborhood.” According to Mike Sievert, the road and its guardrails will be six feet above the surrounding ground level. There is no more “adverse effect” on an existing complex wetland than obliteration of it. Placing another road on the corner where Ambler Way and Gerrish Drive meet will create a **5-way** Intersection (Gerrish Dr., Ambler Way, Gerrish extension, White Driveway, Kelley Driveway) on what is already a blind curve. This is hardly “appropriate use of the land.”

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 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 sites, scenic views and viewsheds.**” (The mature tree line in the floodplain wetland in front of my house will be removed by this project. I and innumerable guests who’ve been to our house over our 34 years consider the view of those trees scenic. Trees are a natural resource. Contrary to Mark West’s assessment of the wetland, the Gerrish wetland – in fact, our entire lot next to it – constitutes part of a significant wildlife habitat, for a herd of deer, large flocks of turkeys, a bear or two, foxes, opossums, skunks, piliated and downy woodpeckers, bluebirds, hummingbirds, barred owls, and many other avian species, toads and frogs to name a few.

6. Impact on property values: “The proposed use will not cause or contribute to a significant decline in property values of adjacent properties.”

When we briefly put our house at 11 Gerrish Dr. on the market five years ago, our realtor was concerned when she saw on a plat plan of the Gerrish-Ambler neighborhood a right-of-way designated between our house and our neighbor at 20 Ambler Way – the town-owned right-of-way. If a road were built in that location, she said, the value of our house and its marketability would certainly be diminished. We assured her – as we had been assured by the Durham building inspector when we applied for a building permit in 1987 – that the town would never build a road there, we were told, “because it’s all wetland.” .

A road six feet above the surrounding area, held in place by a retaining wall, and trimmed with guardrails to vehicles on it from falling off, is not much of a selling point for a home in an otherwise bucolic neighborhood. The ponding of water onto 9 Gerrish and our property caused by a retaining wall blocking its flow into what used to be a wetland would also not be much of a selling point for those two properties. What was once a view of mature trees would be replaced by a six-foot high road and its guardrails.

Article VIII – Wetland Conservation Overlay District

Purposes of Article 175-58, “Purpose of the Wetland Conservation Overlay District,” include:

- B. Minimize flooding and flood damage by preserving the flood storage capacity of wetlands;
- C. Protect wildlife and fisheries habitats and wetlands vegetation;
- D. Maintain stream flow and groundwater recharge;
- E. Conserve natural beauty and scenic quality.

There is no assurance that the proposed Gerrish Drive extension would accomplish any of these objectives.

Article 175-61, section B, specifies that the planning board shall approve a conditional use permit only if the following criteria are met:

1. “There is no alternative location on the parcel that is outside of the WCOD that is reasonably practical for the proposed use.” This is technically true. However, as the town attorney, among others, has acknowledged, there is an alternative location *inside* the WCOD, via Bagdad Road, that is feasible for this purpose.
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.” “Minimum” is a relative term. The amount of soil disturbance necessary to build a road through the Gerrish Drive wetland would be substantial.
3. “The location, design, construction, and maintenance of the facilities will minimize any detrimental impact to the wetland, and mitigation activities will be undertaken to counterbalance any adverse impacts.” In fact,

building a road through the wetland will obliterate a significant chunk of the wetland. You can't mitigate something that has been obliterated.

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." See #3, above. Something that has been obliterated cannot be restored to its existing condition.