

From: [Kimberly Sweetman](#)
To: [Karen Edwards](#)
Cc: [Peter Sweetman](#)
Subject: Comments on Conditional Use of 91 Bagdad Road
Date: Monday, February 22, 2021 10:59:07 AM

[Many thanks for forwarding on the appropriate parties]

Dear Members of the Planning Board and Town Planner Behrendt,

We are writing to respectfully express concern about using a town owned wetland to create a road to facilitate a private development, when the Durham town attorney has indicated that the property owner has a legal right to an alternative access. Both routes are legal, but we don't know the option that will "minimize impact" and as Gail Kelly's letter indicates, due diligence requires a comparison of the environmental impact of both possible roads.

Section 175-61-C of Durham's Zoning Code indicates that conditional use for the plan shall be approved, if, among other conditions, "The location, design, construction, and maintenance of the facilities will minimize any detrimental impact on the wetland..." We don't yet know if the proposed Gerrish access minimizes detrimental impact on the wetlands because other options have not been fully investigated.

Addressing site suitability, section 175-23-1c states that there must be the "absence of environmental constraints (floodplain, steep slope, etc.) or development of a plan to substantially mitigate the impacts of those constraints." Has the flood management plan been adequately presented? As property owners who could experience adverse impacts we don't feel this has yet been done.

Section 175-23-5 states that the proposed use of the site shall preserve wetlands and mature tree lines. Yes, the overall project has reserved undisturbed acreage, but without examining alternate access we really don't know which approach would maximize preservation. While maximizing preservation is not part of the Zoning Code, it is referenced heavily in the town's master plan.

Section 175-23-6 states that the conditional use can only be approved if the proposed use will not cause or contribute to a significant decline in property values of adjacent properties. Has this been explored? I don't recall any discussion of the impact of turning a front-facing lot into a corner lot would have on the value of 20 Ambler Way, or the impact of the construction of a guardrail six feet above grade as the front yard view of 11 Gerrish Drive.

Furthermore, the Durham Zoning Code defines Private Street as “a private right-of-way for vehicles which provides a principal means of access to two (2) or more lots and is subject to an easement for ingress and egress running with the land to the benefit of all lots having frontage thereon. Such easement shall define the parties responsible for maintenance, the collection of trash and recyclables, and snow removal.” Could it not be logically argued that the Bagdad “driveway” to which the Mulherns retain use is, by this definition, a private street? The Zoning Code defines driveway as “a private, vehicular access connecting a house, parking area, garage or other building with the street.” What the Mulherns contest is a “driveway” actually more closely conforms to the town’s definition of a private street. If a street already exists to access the parcel under development consideration, it should be seriously investigated as a potential access point.

We respectfully ask that the town of Durham properly investigate the feasibility of using the Bagdad access so that the access option with the least impact can be identified and pursued.

Thank You,

Kimberly & Peter Sweetman

18 Ambler Way