



TOWN OF DURHAM
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Town Planner's Recommendation
Wednesday, November 18, 2015

XI. ***Public Hearing - Edgewood Road and Emerson Road Subdivision.*** 4-lot subdivision, boundary line adjustment and conditional use (for a wetland crossing, a road widening, and construction of a shared driveway in the Wetland Conservation Overlay District). Jack Farrell, applicant. County Line Holdings, LLC and Mark Morong 1991 Trust, owners. David Vincent, surveyor. Neil Raposa, Civil Consultants, Engineer. Map 1, Lot 15-0. Residence A District..

➤ I recommend the board approve the project as stated below.

Please note the following:

- **Draft conditions.** The draft conditions of approval were presented to the board at its meeting on October 28. I have refined, and made some changes to, the conditions below.
- **Conditional use.** This is for a conditional use so the board will need to go through the criteria as part of the approval. The conditional use will also require an affirmative vote of 5 board members. See provision below regarding the conditional use. I suggest including this language for simplicity: Once all precedent conditions are met, all documents are duly recorded, and the 3 new lots are created, the conditional use shall be permanently established (unless the subdivision is revoked or otherwise substantially altered, as reasonably determined by the Planning Board).
- **Conservation Commission.** The Conservation Commission reviewed the application on February 12, 2015 and recommends approval of the conditional use with several conditions which I have incorporated into the draft conditions.
- **Waivers.** The applicant has requested several waivers, including waivers from the Conservation Subdivision requirements. Since this will not be a conservation subdivision granting of those waivers makes sense. This waiver should be given because the specific circumstances of the subdivision will carry out the intent of the regulations. This rationale must be noted in the Planning Board minutes per state law. I noted the waivers in the draft conditions.
- **Staff review.** We presented the revised plans to the Technical Review Group on September 15 and there were no particular concerns other than Tom Johnson expressing a different opinion about the handling of garbage. We have signoffs from all four pertinent

departments via email (Chief Kurz provided a separate memo). These were included in the prior Planner's Recommendations. I have incorporated the comments into the draft conditions.

- Selling large lot first. At the applicant's request I added a Note that would allow conveyance of only the large lot first, separate from the other 3 lots. This is an acceptable procedure in situations like this. The other 3 lots could thus not be conveyed until the remaining conditions are met and a release signed by the Town is recorded.
- Limited access for Lot 15-0. The applicant has requested that an easement be created to allow limited access for the owner of the large lot to get access across Lot 15-1 to reach the back of his property for general maintenance but not for primary access. I added some language below to accommodate this, that has been approved by the applicant.

Draft

NOTICE OF DECISION

Project Name: Edgewood Road – Emerson Road Subdivision
Project Description: 4-lot subdivision
Applicant: Jack Farrell
Surveyor: David Vincent
Engineer: Neil Raposa, Civil Consultants
Property Owner: County Line Holdings, LLC and Mark Morong 1991 Trust
Map and Lot: Map 1, Lot 15-0
Zoning: Residence A
Date of approval: **November 18, 2015**

This project has been approved as stated herein. "Applicant", herein, refers to the property owner, business owner, individual(s), or organization submitting this application and to his/her/its agents, successors, and assigns.

PRECEDENT CONDITIONS

*[Office use only. Date certified: _____ ; As-built's received? _____ ;
All surety returned: _____]*

All of the precedent conditions below must be met by the applicant, at the expense of the applicant, prior to the plans being certified by the Planning Department. Certification of the plans is required prior to issuance of any building permit or recording of any plans. Once these precedent conditions are met and the plans are certified the approval is considered final.

***Please note. If all of the precedent conditions are not met within 6 calendar months to the day of the board's approval - by May 18, 2015 - the board's approval will be considered to

have lapsed and resubmission of the application will be required (unless an after-the-fact extension is granted by the Planning Board). ***It is the sole responsibility of the applicant (or his/her agent) to ensure that these conditions are met by this deadline.*** We urge the applicant to carefully track his/her progress in meeting the individual conditions. See RSA 674:39 on vesting.

Plan Modifications

The plan drawings are to be modified as follows:

- 1) **Boundary Line Adjustment.** Add “Boundary Line Adjustment” in prominent letters in the box that says “Parcel A.”
- 2) **Sewer.** Tie directly into the manhole in Edgewood Road and not to the stub. This may require an inside drop or reworking the invert. The culverts must have flared end sections not just exposed plastic pipe (Consult with the Town Engineer with any questions.)
- 3) **Street name and addresses.** Determine a street name for the shared driveway and addresses for the 3 lots to be approved by the Fire Department. Show the name and street addresses on the plans. Due to the houses being set into the woods, it is critical that they be properly numbered and identified. Obtain comments from the Police Department on the addressing plan.
- 4) **Mail boxes.** Mail boxes should probably be placed near the street sign. The Post Office will drive down the Class 6 road to reach them.
- 5) **Transformer.** Add vegetative screening around the transformer.
- 6) **Driveway easement.** Adjust metes and bounds of driveway easement as needed to reconcile the plat and driveway plans.
- 7) **Lot correction.** Correct the ownership of Map 1, Lot 14-1 and 14-4 to Lyle Springboard, LLC and Poworoznek, respectively.
- 8) **Limited access for Lot 15-0.** Show an easement over Lot 15-1 for the benefit of Lot 15-0. Add notes defining the easement as follows. Allow for the owner of 15-0 to build a gravel driveway no wider than 12 feet connecting with the main/shared driveway. Show a 25 foot wide easement on the plans for the driveway construction and maintenance. The southerly boundary of the easement would be the wetland buffer line so that no conditional use would be needed. The driveway would come off the northerly finger of the driveway. The easement would be used only by the owner of Lot 15-0 or any parties that he might hire who would need to access the rear of the lot to perform any work there. The easement shall not be used for utilities, nor visitors to the lot, nor as the primary access to the lot.

Plan Notes

Add the following notes (or equivalent) to the plan drawings:

- 9) “Lot 15 Dredge and Fill. A dredge and fill permit and a conditional use would be needed for a driveway to cross the wetland buffer for Lot 15-0 should the property owner desire to locate a house in the larger, developable area.
- 10) “Sprinklers. A condition of the Fire Department agreeing to this road/driveway layout is for the 3 houses that would take access to this road to be sprinkled.”
- 11) “For more information about this subdivision, or to see the complete plan set, contact the Town of Durham Planning Department, 8 Newmarket Road, Durham, NH 03824, (603) 868-8064.”
- 12) “Outside construction hours. All outside construction activity related to the development of this site is restricted to the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday and 8:00 a.m. to 6:00 p.m. Saturday.”
- 13) “No further subdivision. There is to be no further subdivision of any of the lots. Lot lines may be adjusted such that there would be no material impact on the character of the subdivision. No additional buildable lots beyond the number approved in this plat will be permitted (this requirement is made pursuant to the variance granted and the Planning Board’s review of the parent parcel and a determination that the number of lots approved is the maximum appropriate for the parcel).”
- 14) “Construction fencing. An orange construction fence must be placed alongside the wetland buffer prior to the start of construction on all lots that contain a wetland buffer (this is not required if the required silt fence is orange).”
- 15) “Restrictions on use. As a condition of this subdivision, due to access constraints, all four lots are restricted to single-family houses; all three lots accessed from Edgewood Road are restricted to single-family use, with no accessory dwelling units and no home occupations. The developer has agreed to this restriction.”
- 16) “Large trees. As part of the conditional use for activity within the wetland buffer, the developer and individual home owners shall make every effort shall to save large trees on the property.”
- 17) “Road maintenance. It is a condition of this subdivision that the owners of the three new lots accessed from Edgewood Road are responsible for the permanent maintenance of the Class 6 portion of Edgewood Road (and the private shared driveway). This approval does not impose any requirements upon other property owners taking access from the Class 6 road to participate in the maintenance. The Town of Durham does not, and shall not, maintain the Class 6 portion of Edgewood Road.”
- 18) “Trash. The Town does not pick up trash on the Class 6 portion of Edgewood Road nor on the shared driveway. Homeowners may either bring their trash to the end of the Town-Edgewood Road Subdivision – Planner’s Recommendations – November 18, 2015

maintained portion of Edgewood Road or take it to the transfer station on Durham Point Road. The Town reserves the right to not pick up trash at the end of Edgewood Road if the trash is not maintained in a neat and orderly manner.”

* **Note.** At the applicant’s option, a plat may be recorded prior to meeting all precedent conditions in order to allow for the conveyance only of Lot 15-0. The applicant may pursue this option provided: a) all plan modifications and plan notes, above, are completed; b) items a, b, and c, under Recording, below, are recorded; c) a very prominent note on the plat is added and a separate instrument is recorded stating that the three new lots may not be conveyed until a release signed by the Town is recorded; d) The Town Attorney approves of this procedure; and e) in the event that the other conditions are not met by May 18, 2015 or by whatever date the Planning Board may grant an extension to meet precedent conditions, then the Planning Board shall review the status of the subdivision and take any appropriate action, including potentially combining the 3 remaining lots. Once the remaining precedent conditions are completed the applicant can record a release for the three new lots.

Other Precedent Conditions

- 19) Deed for BLA. For the boundary line adjustment (BLA) between Lot 15-0 and Lot 14-5 the applicant must submit to the Planning Department a copy of the signed and notarized deed, which will effect the conveyance of the affected land. (After the plat is certified by the Planning Department the original deed and plat will then be recorded simultaneously (see below). The deed may refer to the plat and state that the conveyance is not effective until such time as the plat is certified and all documents are recorded.) This requirement is waived if the same party owns both lots.
- 20) Fire Apparatus. Confirm to the satisfaction of the Fire Department that the apparatus will not adversely impact the underground utilities.
- 21) Surety. The applicant shall post an surety acceptable to the Public Works, Planning, and Business Departments to cover the cost of the improvements to Edgewood Road and the shared driveway and the installation of utilities and other infrastructure. Alternatively, the applicant may actually construct these improvements and infrastructure. The surety or related documentation should make clear that if the City needs to call the surety, the City may use the funds to install infrastructure and/or reclaim the site, as appropriate.
- 22) Application fees. Reconcile any difference between the total fees that were paid and what was required.
- 23) Deed terms. The draft deeds (or other appropriate instruments) for the three new lots must include appropriate language about single-family use only (including Lot 15-0), sprinklers, trash, no-cut buffers (including Lot 15-0), no further subdivision (including Lot 15-0), construction and maintenance of the Class 6 portion of the road and the shared driveway (including the ability of any lot buyer to have access across the other lots to build the shared driveway should 1 lot owner wish to do this), other deed restrictions that have been discussed as part of this subdivision, and any other appropriate matters. Submit draft deeds to the Town Planner for review. A condition of the Fire Department agreeing to this road/driveway layout is for the 3 houses that would take access to this road to be

sprinkled. The Town does not pick up trash on the Class 6 portion of Edgewood Road nor on the shared driveway. Homeowners may either bring their trash to the end of the Town-maintained portion of Edgewood Road or take it to the transfer station on Durham Point Road. The Town reserves the right to not pick up trash at the end of Edgewood Road if the trash is not maintained in a neat and orderly manner.

- 24) Private Driveway Agreement. The draft Private Common Driveway Maintenance Agreement shall be finalized, as appropriate.
- 25) Road Maintenance Agreement. The draft Road Maintenance Agreement for Class VI Portion of Edgewood Road Extension (It is no longer called “Extension”) shall be finalized, as appropriate.
- 26) Council Authorization. Approval from the Town Council is needed for authorization to issue building permits for the three new lots to take access off a Class 6 road and a shared driveway (per RSA 674:41 (c)(1) and (d)(1)).
- 27) Electric service review. Obtain written statement from Eversource Energy that provision of electric service to and on the site are workable (Generally, Eversource will not approve the layout until the road/driveway is actually built or laid out on site).
- 28) Signature. The property owners and developer shall sign this notice at the bottom.
- 29) NHDES – Dredge and Fill. The applicant will need to come back to the Conservation Commission as part of the NHDES Dredge and Fill review to fill the wetland, if the approval has not already been granted. The Commission may stipulate any additional other appropriate conditions at that time, as provided in the conditional use for activity within the wetland buffer.
- 30) Indemnification form. Record an indemnification per RSA 674:41 for the 3 new lots (It is not needed for lot 15-0). The draft form must be approved by the Planning Department .
- 31) Final drawings. The following complete sets of final approved drawings shall be submitted for signature (except the electronic version) by the Town, including all sheets: (a) one large set of mylars; (b) two large sets of black line drawings; (c) one set of 11"x17" drawings; and (d) one electronic version by pdf or CD. Each individual sheet in every set of drawings must be stamped and signed by the land surveyor, engineer, or architect responsible for the plans. *Please note*. If there are significant changes to be made to the plans, as specified above, one full size paper check print must be sent to the Planning Department for review prior to producing these final drawings. (The primary set of plans was last received)

GENERAL AND SUBSEQUENT TERMS AND CONDITIONS

All of the conditions below are attached to this approval.

Conditions to be met prior to commencing any site work

- 1) Site work. No significant site work or ground disturbance may be undertaken until:

- a) Precedent conditions. All of the precedent conditions are met and the plans are signed;
- b) Preconstruction meeting. The preconstruction meeting with Town staff has taken place. Contact Michael Behrendt, Town Planner, at (603) 868-8064 to arrange for the preconstruction meeting.
- c) Limits of clearing. Limits of clearing for the road and shared driveway must be established in the field and approved by the Public Works Department; and
- d) Erosion and sedimentation control. The erosion and sedimentation control measures must be in place prior to the pre-construction meeting in order that they may be inspected at or prior to the meeting.
- e) SWPPP. If applicable, the Stormwater Pollution Prevention Plan (SWPPP) is prepared and the Notice of Intent (NOI) is filed with the EPA (Also, see note on SWPPP above) and a copy of the SWPPP is provided to the Department of Public Works.
- f) Gravel. The gravel will need to be good processed gravel. The Department of Public Works must approve the specifications prior to commencing site work.
- g) Access for construction. The applicant shall obtain approval from the Public Works Department for the access way that will be used for construction of the shared driveway, unless the full improvements will be in place prior to construction on any individual lots.

Conditions to be met prior to issuance of any building permit

- 2) Sprinklers. Develop plan for sprinklers acceptable to the Fire Department, recognizing that the houses will be served by private wells [If the subdivision is approved with private wells]
- 3) Recording. No building permits on the 3 new lots shall be approved until there is proof of the items below having been recorded at the Registry of Deeds.

Conditions to be met prior to issuance of any certificate of occupancy

- 4) All improvements – road, shared driveway, utilities, and other infrastructure must be in place and deemed properly constructed by the Department of Public Works.
- 5) Monumentation. All lot corners shall be marked with capped iron markers or other appropriate monumentation (installation is best done after road construction).
- 6) As built. One set of full size (measuring at least 22" x 34") black line paper plus one full size mylar, plus one 11" x 17" paper copy plus a digital pdf copy of the as-built plans (or "record drawings") stamped and signed by the Engineer or Surveyor showing the improvements to the Class 6 road and the shared driveway and common utilities are to be submitted to the Planning Department (unless an appropriate surety is placed).

Other terms and conditions

- 7) Erosion and sedimentation. All erosion and sedimentation control structures alongside the road improvements shall remain in place and be maintained until vegetation is established and the ground surface is stabilized.
- 8) Fire Access. Access into the site for fire apparatus must be maintained at all times during the construction process. This is the sole responsibility of the applicant/ developer to maintain this access. Please contact the Fire Department at 862-1426 with any questions about access requirements.
- 9) Variance. A variance was granted to this application on April 8, 2014 to be exempted from the Conservation Subdivision requirements. The conditions of the variance are incorporated into this approval.
- 10) Waivers. This approval includes the following waivers: a) from the Conservation Subdivision requirements (This was granted because this subdivision is not a conservation subdivision); b) from Subsection 9.03 A. of the Subdivision Regulations which limits access to private driveways to 2 lots (This was granted due to the constraints of the land requiring access via the private driveway to 3 lots); and c) from the requirement for a 20 foot wide paved road in the Road Construction Regulations (This was granted since Edgewood Road is an existing Class 6 road and the expected amount of traffic can be supported with the additional gravel).
- 11) Conditional use. A conditional use was approved covering the wetland crossing, the widening of Edgewood Road, construction of the shared driveway, and construction of individual driveways, as needed, for lots 15-1, 15-2, and 15-3. Once all precedent conditions are met, all documents are duly recorded, and the 3 new lots are created, the conditional use shall be permanently established (unless the subdivision is revoked or otherwise substantially altered, as reasonably determined by the Planning Board).
- 12) Street sign. A street sign, if required and as approved by the Department of Public Works, bearing the name of the approved street name, above, shall be installed prior to issuance of a certificate of occupancy for any of the three lots.
- 13) Recording. **a)** The plans (all three pages, including the subdivision plan, the shared driveway plan, and the driveway details, except for any pages which the Registry might not accept), **b)** the deed conveying the land within the boundary line adjustment, **c)** this notice of decision (per RSA 676:3 III), **d)** all easements/restrictions/deeds, and **e)** the indemnification form (above) must be recorded at the Strafford County Registry of Deeds within two (2) calendar months to the date the plat is certified (e.g. if certified September 9th it must be recorded by November 9th). See RSA 478:1-a regarding plat requirements. Failure to comply with this requirement herein shall render the subdivision null and void.
- 14) Violations. In the event of any violations of these conditions of approval or of any pertinent local, state, or federal laws – such as those regarding erosion and sedimentation control, wetlands, stormwater management, and general site

development standards – the Town of Durham reserves the right to take any appropriate permissible action, including, but not limited to, withholding of building permits, withholding of certificates of occupancy, withholding of driveway permits, revocations of permits/approvals, referring violations to other agencies, and calling of bonds.

- 15) Execution. The project must be executed exactly as specified in the approved application package unless modifications are approved by the Town.
- 16) Approval. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of this approval unless otherwise updated, revised, clarified in some manner, or superseded in full or in part. In the case of conflicting information between documents, the most recent documentation and this notice herein shall generally be determining.
- 17) Other permits. It is the responsibility of the applicant to obtain all other local, state, and federal permits, licenses, and approvals which may be required as part of this project.
- 18) Findings of fact. As part of this review and approval the Durham Planning Board finds the following: **A)** The applicant submitted an application, supporting documents, and plans for the project; **B)** On July 23, 2014, the Planning Board accepted the application as complete; **C)** The Planning Board held one or more public hearing(s) on the application; **D)** The applicant revised and updated the plans and other documentation numerous times pursuant to comments from the Planning Board, public, and Technical Review Group, and other Town boards and committees; **E)** The Planning Board held a site walk on August 28, 2014; **F)** The Planning Board reviewed the application in accordance with state law, the Durham Zoning Ordinance, the Durham Subdivision Regulations, and other applicable law and found that the application meets all requirements (except where waivers or variances may have been granted); **G)** This project is considered to not be a Development of Regional Impact; **H)** The Planning Board duly approved the application as stated herein; **I)** Substantial records are maintained of the process and documentation submitted in the Planning Department. A record of documentation and a timeline of the project will be prepared as needed; **J)** Zoning Compliance. This application complies with zoning requirements in terms of lot area, frontage, and other requirements. **K)** The Zoning Administrator confirmed that the 100 foot frontage requirement may be met using the state right of way; **L)** After significant discussion by the Planning Board and the Technical Review Group it was determined that this subdivision is reasonable and appropriate including the proposed improvements to the Class 6 portion of Edgewood Road and the creation of a shared driveway to access three new lots. This support is based in part upon the size of the subject lot and the intensity of development that might otherwise occur there; **M)** The developer sought to negotiate an arrangement with the owners of the existing lots that take access off this section of Edgewood Road for them to participate in maintenance of the Class 6 portion of the road, but he was not able to secure such an arrangement. Therefore, this subdivision imposes the maintenance requirements upon the owners of the three new lots.

Signature of applicant

date

Printed name of applicant

Signature for County Line Holdings, LLC

date

Printed name for County Line Holdings, LLC

Signature for Mark Morong 1991 Trust

date

Printed name for Mark Morong 1991 Trust

Signature of Planning Board Chair

date

Printed name of Planning Board Chair