



TOWN OF DURHAM
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Town Planner's Recommendation
Wednesday, April 27, 2022

VIII. ***Public Hearing - Durham Point Road – New Driveway.*** Conditional Use Application for driveway to cross wetland buffer for new single-family house. Located catty corner to the Durham Transfer Station. The lot shares a driveway with 101 Durham Point Road. Karon Walker, owner. Scott Boudreau, surveyor. Map 11, Lot 38-2. Residence Coastal Zone.

➤ I recommend approval as stated below.

The Planning Board held a site walk of the lot on Saturday, April 16. While I appreciate the concerns of the direct abutter to the northwest to maintain a good buffer from his house to a new house on the subject lot, the only matter in the board's purview is the conditional use for the driveway to be situated within the wetland buffer.

The eight general criteria are largely not applicable to the application. Those criteria, such as fiscal impacts, will not be impacted by the fact of there being a driveway situated within the wetland buffer.

I think the four WCOD criteria are met, along with any other conditions which the Conservation Commission and Planning Board might wish to specify.

Certainly, if the access from Durham Point Road were taken further south there would be no encroachment upon the wetland or wetland buffer (in keeping with the first criterion) if the new house location were in the front part of the lot. Locating the driveway there would require a waiver from the 1,200-foot spacing for driveways under the subdivision regulations (not a significant hurdle) and an amendment to the approved subdivision which required a shared driveway along the current driveway leading to the adjacent lot (not a significant hurdle). However, I believe such a requirement would be most unreasonable.

The first criterion is "There is no alternative location on the parcel that is outside of the WCOD that is reasonably practical for the proposed use;" Is requiring placement of the driveway and house in the front of the lot "reasonably practical?" Perhaps it is *practical* though a waiver and amendment would be required but it would certainly not be *reasonable* in my professional opinion to require the buyer of a vacant 50-acre lot to situate a house much further from the river, without any view of the river to avoid minimal encroachment into the wetland buffer. Apart from the language that we have in our ordinance, when cases go to court, the judge considers what is legal along with what is reasonable.

Draft
NOTICE OF DECISION

Project Name: Durham Point Road Conditional Use
Action Taken: APPROVAL
Project Description: Conditional use for driveway to cross wetland buffer
Property Owner: Karon Walker and Peter Howd
Surveyor: Scott Boudreau
Map and Lot: Map 11, Lot 38-2
Zoning: Residence Coastal
Date of approval: April 27, 2022

The conditional use application is approved as submitted. The conditional use includes the gravel driveway, drainage swales, regrading, and underground electric as depicted on plans revised on April 11, 2022. If a turnaround is required by the Fire Department, the turnaround may not be located within the wetland buffer. The Planning Board determined that all conditional use criteria were met.