

From: [Kimberly Sweetman](#)
To: [Michael Behrendt](#)
Cc: [Andrea J. Novotney](#)
Subject: Re: Gerrish Drive - basic questions *
Date: Tuesday, October 11, 2022 12:19:27 PM

Dear Mr. Behrendt, (with CC to planning board members)

I appreciate the outlining of these questions to the planning board. However, your framing omits that in *Kelley v. Durham*, the judge ruled that the omission of the HISS maps led the planning board to a course of action that neglected to consider the Bagdad access. As you have opined in your first framing question, yes, it's unlikely the board could *require* a different access. But according to the judgement in *Kelley v. Durham*, the board now needs to pick up the process where it would have been had the HISS maps been included, and consider related to Article XIII, section 175-61B that will minimize any detrimental impact on the wetland. This would include an appropriate investigation of alternative means of access.

Respectfully,

Kimberly Sweetman

On Oct 11, 2022, at 9:28 AM, Michael Behrendt <mbehrendt@ci.durham.nh.us> wrote:

To the Planning Board,

There are really a few basic questions that are pertinent at this point to frame the board's review of the Gerrish Drive subdivision, especially in the limited context of the HISS map which was not verified earlier.

1. Could the Planning Board require that the applicant use a different access into the property, from Bagdad Road or Dover Road? I think the answer here is that you cannot.
2. Could the Planning Board deny the application as now submitted? The applicant has the legal right to access their property for development. On what basis would the application be denied?

3. Could the plans be improved at all? The Planning Board spent two years reviewing the plans carefully with input from abutters, Town staff, the Conservation Commission, a wetland scientist, a landscape architect, an outside drainage consultant, and now an outside soils consultant. The design engineer modified and adjusted the plans numerous times in response to this input and the discussion with the board.

4. Is there any additional information that would truly be useful now? Is there any additional information that would affect these other fundamental questions above?

Michael Behrendt

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