

Nic Strong

From: Rob Clemens <rhclems@gmail.com>
Sent: Friday, April 5, 2024 3:21 PM
To: Nic Strong
Cc: Danielle Pray; Jared Hardner
Subject: Wetlands Waiver Request for 86 Chestnut Hill Rd.

[External Sender]:

Nic, the ACC previously submitted comments regarding the proposed residential development at 86 Chestnut Hill Rd. (Lot 11-10) and our opposition to any waiver of wetland ordinance rules that the applicant might seek from the ZBA. We understand that a waiver was sought at the ZBA's 3/16 meeting. We have reviewed the waiver request submitted by the applicant and offer the following additional comments in response.

The legal argument presented to the ZBA in favor of a waiver for house construction on Chestnut Hill Rd raises three principal concerns for the ACC.

- 1) The legal argument that the variance is *not contrary to the public interest* lacks an environmental basis. Wetlands and their buffers are protected because they support important functions and values, including retention of floodwaters, filtration of water that enters our aquifers, and essential wildlife habitat. The assertion that the house has no impact because it occupies only 1,403 square feet of the buffer, coming to within only 21.4 feet of the wetland, is insufficient. It is not possible to evaluate the level of impact to wetland functions and values in this simplistic manner. It also ignores construction impacts, which will extend further. It should also be noted that this wetland has a 50-foot buffer because it was determined by a wetland scientist to have *significant* values and functions, greater than the wetlands in Amherst protected by a 25-foot buffer. Furthermore, it should be noted that Amherst's buffer requirements are a compromise between environmental protection and development – full protection of our wetlands may require even larger buffers, so it is reasonable to expect that incursions into existing buffers will have an environmental impact.
- 2) An even greater threat to wetland functions and values in Amherst is the *cumulative* impact of multiple variances (and unenforced infractions). If every incursion into a buffer is justified by an argument of “no harm” because when studied in isolation it appears to be of little significance, we lose sight of the fact that multiple incursions add up to a very significant impact. When that impact includes affecting functions such as flood water storage or provision of clean water, it will incur great expense on the residents of Amherst to remedy those problems. We are effectively asking the town to replace the environmental services performed by wetlands with built infrastructure that is expensive to construct and must be maintained.
- 3) There is a question of fairness that has not been addressed. Residents and developers for the most part comply with the Zoning Ordinance. Those that come before the Planning Board and the permitting office are held to a common standard. Within defined limited parameters, the Planning Board grants Conditional Use Permits. If the ZBA grants one-off variances to the wetland ordinance to anyone that simply asks, it is unfair to those that have obeyed those

restrictions. Furthermore, it undermines the integrity of our ordinance and makes it more likely that others will ask for variances too, resulting in the cumulative effects described above.

In summary, we found the legal argument lacking in sufficient environmental basis to justify a variance to our town's wetlands protections, nor does it acknowledge the wider policy implications of eroding broad compliance with our wetlands ordinance. Thank you for the opportunity to present our concerns. - Rob Clemens, Vice Chair, Amherst Conservation Commission