

These minutes were approved at the April 25, 2022 meeting.

DURHAM CONSERVATION COMMISSION
Monday, March 28, 2022
DURHAM TOWN HALL, COUNCIL CHAMBERS
7:00 p.m.

MEMBERS PRESENT: Jake Kritzer (Chair), John Nachilly (Vice Chair - attending remotely), James Bubar (Planning Board Rep), Walter Rous, Carden Welsh (Town Council Rep), Alternate Erin Hardie Hale and Alternate Roanne Robbins

ABSENT: Coleen Fuerst

OTHERS PRESENT: Town Planner Michael Behrendt, Land Stewardship Coordinator Tom Brightman and Minute Taker Lucie Bryar

I. & II. Call to Order: Chair Jake Kritzer called the meeting to order at 7:03 p.m. and read the Land, Water and Life Acknowledgement Statement.

III. Roll Call

Roll Call Attendance was taken.

IV. Approval of Agenda

It was noted Item IX (UNH and Town Greenways) will be postponed to the April 25th meeting so that Mr. Nachilly can be present in Council Chambers. Land Stewardship Coordinator Tom Brightman will be moved up to Item VII, with all subsequent items re-numbered.

Mr. Bubar MOVED to approve the agenda as amended; SECONDED by Mr. Rous, APPROVED unanimously, 7-0, Motion carries.

V. Public Comments

Neil Slepian, long-time Durham resident, introduced himself and said he has applied to join the Conservation Commission. The Chair thanked him and noted his appointment will be decided by Town Council.

VI. Review of Minutes: January 24 & February 28 – POSTPONED to April 25
Commission members had not received minutes to review in advance.

VII. Land Stewardship. Tom Brightman, Land Stewardship Coordinator. Update on the Stevens Woods property use questionnaire.

Mr. Brightman said the questionnaire for Doe Farm is done and the Land Stewardship Committee is now seeking to do one for Stevens Woods. There is an online questionnaire available, with an April 16th deadline.

The Committee is looking for volunteers to conduct in-person, on-site surveys in late April/early May. Anyone interested should contact him.

VIII. 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.

Mr. Behrendt said Commission members have been invited to join a Planning Board site walk on April 16 at 10:00 a.m. Due to limited parking on site, members should meet at Town Hall at 9:45 for carpooling.

Peter Howd came forward and said he's representing his wife, Karon Walker, and the Trust. Surveyor Scott Boudreau is here as well.

The applicant is seeking to build a single-family residence, with access via a shared driveway location shown on the original subdivision plan. They are seeking a Conditional Use Permit to cross through the wetland buffer in order to construct the driveway.

Mr. Boudreau shared site plans and indicated the area of wetland buffer that would be impacted by the proposed driveway. He noted in one section the driveway would be about 24-feet from the wetlands. Some fill will be required and a few culverts and rip rap will be added to prevent backup of drainage.

The total impact area is about 8,000 square feet. The proposed driveway is about 8-feet wide.

Mr. Bubar asked about the impact of any utility trenches and Mr. Boudreau replied they are hoping to have underground utilities, but it's unknown if there's ledge in that area.

Mr. Rous said the applicant should think about adding a pullout area to help manage egress when there's oncoming traffic.

The Chair asked why the Commission is not seeing the whole project, but only the driveway. Typically, the house would be sited on the plans.

Mr. Howd said the house -- to be designed by an architect -- would be back in the woods and he doesn't believe any special permits will be necessary for it. They are addressing driveway permits now so that work can get started.

Mr. Welsh asked about the grade of wetlands present and Mr. Boudreau replied it's poorly drained soil, not standing water or vernal pools.

Vice Chair Nachilly asked about the width of the impacted area and Mr. Boudreau replied it's about 40 feet wide and just under 250-feet long.

The Chair then invited Public Comment.

Bob McNitt, the Owner of Lot #1 (next door) came forward. He said at last week's Planning Board meeting, he was surprised to hear applicant Karon Walker say they are restricted by deed to using that driveway access. He does not believe that was the intent of the original language for the subdivision.

Mr. McNitt referenced seven Findings of Fact from the original subdivision – with item 7 stating, “Access to Lot 2 will be made by using the existing driveway over Lot #1.” Mr. McNitt said there had been a later boundary line adjustment. He disputes the owners of lot #2 have no other options to access their property or are obligated to do so by deed through Lot #1.

He objects to Lot #2 owners driving through his backyard and knowing each time they are going in or out.

The Chair responded that it looks like the proposed driveway seems to be the way to minimize impact on the wetlands and the buffer.

Mr. McNitt talked about some of the challenges of the properties, including a granite wall and difficulties residents have when trying to safely leave the Transfer Station.

Chair Kritzer thanked Mr. McNitt for his comments and turned the discussion back to Commission members. It was noted there will be another meeting in April before the Commission needs to send its recommendation to the Planning Board.

In answer to a procedural question about the Conservation Commission's role, Mr. Behrendt said the application was discussed with the Town Attorney who concluded the criteria for a Conditional Use Permit in this case only applies to the placement of a driveway in a wetland buffer.

There was brief discussion about the four criteria the Commission will review in order to reach a decision and about other potential access points.

Further discussion was continued until after the site walk on April 16th.

IX. 52 Oyster River Road – Regrading of Site. Permitted Use B for regrading site for new single-family house including removal of vegetation in Shoreland Protection Overlay District (SPOD). Ted and Cristina Baker, property owners. Alex Ross, Ross Engineering, engineer. Map 6, Lot 7-4. Residence A Zone.

Ted Baker came forward with builder Stephen Mead this evening. The applicant is proposing to regrade the site to build a single-family home. The lot has been vacant for a long time. It had a storm drain that created a lot of erosion, but the drain has now been moved.

There is only one buildable spot on the lot and a significant amount of fill will need to be brought in to make it workable. The property sits far below adjacent properties (about 8 to 10 feet), so needs to be re-graded.

The applicant has received a DES permit from the State.

There was discussion about removal of trees and other vegetation. Mr. Baker said ideally they would like to preserve some of the trees, but it's uncertain at this point how many can be saved.

Mr. Behrendt earlier had shared a list of plantings suitable for shade, slopes and overlay districts. Mr. Baker said he understands the need to prevent runoff into the river and he believes grass may help in the immediate area of the house. Later he added that the proposed fill will impact about ¼ of the property significantly.

Commission members briefly discussed the criteria that would need to be considered, including taking appropriate erosion control measures and ensuring any activity be conducted in a manner that minimizes impact on the wetland.

Mr. Baker said he and the engineer believe that adding fill will provide some benefit, especially considering the damage done by the original storm drain.

It was noted the applicant has received a variance to site a portion of the house in the WCOD.

Mr. Rous asked about grading on the back side of the property—how extensive will it be? How much of it is necessary to support the house?

Mr. Baker replied the primary concern is bringing the lot up to the road and he's trusting Ross Engineering to address the rest of the property. In its present state, a car can't be driven onto the property since it's a big hole.

Commission members said they would need to see more detailed site plans with clear delineation of which areas would be filled prior to considering a Conditional Use Permit.

After further discussion, consensus was reached to hold a site walk on April 16th at 9:00 a.m. and to invite the Planning Board. The applicant is scheduled to go before the Planning Board again on May 27th.

Chair Kritzer advised the applicant to do the following for the April 25th meeting:

- Have the project engineer give a detailed statement about the necessity of the grading to allow for construction of the house.
- Provide a detailed planting plan.
- Delineate where hydrophilic shrubs would be.
- Indicate trees on the plan and delineate those that might be saved – particularly those with strong root systems that might be key to the integrity of the riverbank.
- Prior to the site walk, the engineer or builder needs to flag where the disturbance (re-grading) will take place.

X. Other Business

Mr. Bubar raised the issue of an application currently before the Planning Board for a parking lot at 19-21 Main Street and asked if the Conservation Commission should weigh in on it again. There are no wetlands directly involved, but a significant amount of fill. He doesn't know if it's excessive fill.

Mr. Behrendt said there are some potential environmental issues the Commission could choose to comment on: i.e., the removal of trees, a change in grade, the drainage plan, and potential impact on the brook below and then the Oyster River.

Mr. Welsh asked on what basis the Conservation Commission would get involved and Mr. Behrendt replied Section 8 of the Site Plan Regulations includes consideration of natural resources.

It was decided to postpone this until the next meeting, giving members an opportunity to review the pertinent regulations.

Discussion of New Initiatives

Chair Kritzer asked about dedicating time at the next meeting to new initiatives that have been talked about in the past: e.g., engaging in more public education; working on Town Council goals that are conservation-related; and engaging the indigenous community.

Mr. Welsh said Town Council should be finalizing their annual goals at the next meeting. Some relate specifically to the work of the Commission, such as promoting the long-term health of Great Bay and would be pertinent to the discussion.

Members agreed it would be valuable to spend time on these ideas at a future meeting.

World Fish Migration Day

Ms. Robbins reported World Fish Migration Day will be celebrated on May 21st. Kat Ashcraft, Environmental Policy Professor at UNH, is leading the effort. She asked if the Conservation Commission would like to take part in some way.

There will be a fish telemetry event; water quality monitoring presentation by the Oyster River Watershed Association and Ms. Robbins has offered to do a fish printing activity for children. She's open to other ideas.

Removal of Mill Pond Dam

Chair Kritzer said since the Commission advocated for removal of the dam, he would like to convey to Town Council that they are ready to help in any way appropriate. He talked about federal funding currently available with no strings attached.

Mr. Bubar asked who would own the newly-exposed riverbanks once the dam is removed. Mr. Welsh replied in most cases it depends on property owners' deeds. Some deeds may indicate their land extends to the center of the river. Anything that remains navigable belongs to the State. Anything not navigable would be based on the deeds of private landowners.

There was discussion about the timeline and funding for removal of the dam. The Commission hopes to invite town officials (i.e., Town Engineer April Talon and Public Works Director Rich Reine) to share regular updates with them.

Vacancies and Changes on the Commission

Chair Kritzer said two members will be stepping down when their terms expire in April: Walter Rous and Coleen Fuerst. In total, that leaves three vacancies on the Commission.

Alternates Roanne Robbins and Erin Hale have been invited to apply. Ms. Hale indicated her intention to do so and later Ms. Robbins said she will apply as well.

The Chair noted there will then be a need for alternates. Anyone interested should reach out to apply.

XI. Roundtable. Updates from Conservation Commission members.

Mr. Welsh reported that an Integrated Waste Management advisory committee explored the idea of composting town wide. Residents of Lee and Durham, along with representatives from UNH looked at collecting organic waste and composting it.

After studying the topic, the Town has decided not to offer composting for the foreseeable future. He noted the topic is “complicated, expensive and different groups involved had different objectives.” Mr. Welsh added that UNH collects its own organic waste and turns it into energy.

XII. Adjournment

With no further business, Mr. Bubar MOVED to adjourn at 9:35 p.m.; SECONDED by Mr. Rous, APPROVED unanimously, 7-0, Motion carries.

Respectfully submitted,
Lucie Bryar, Minute Taker
Durham Conservation Commission

Note: These written minutes are intended only as a general summary of the meeting. For more complete information, please refer to the DCAT22 On Demand videotape of the entire proceedings on the town of Durham website.