

[D R A F T]

DURHAM CONSERVATION COMMISSION
Monday, March 25, 2024
DURHAM TOWN HALL, COUNCIL CHAMBERS
7:00 p.m.

MEMBERS PRESENT: Jake Kritzer (Chair); Erin Hardie Hale (Vice Chair); Wayne Burton (Town Council Rep); Richard Kelley (Planning Board Rep); Nick Lanzer (Alternate); Roanne Robbins; Neil Slepian; and Dwight Trueblood (Alternate);

MEMBERS ABSENT: John Nachilly

ALSO PRESENT: Michael Behrendt, Durham Town Planner and Sara Callaghan, Land Stewardship Coordinator

1 **I. Call to Order**

2 Chair Jake Kritzer called the meeting to order at 7:00 p.m.

3

4 **II. Land Acknowledgement Statement**

5 The Chair read the statement as adopted by the town's Human Rights Commission.

6

7 **III. Roll Call and Seating of Alternates**

8 Roll call attendance was taken and the Chair welcomed Wayne Burton as the new
9 Town Council rep, replacing Carden Welsh who served for several years. He invited
10 Mr. Burton to introduce himself.

11

12 Mr. Burton said he's been a town resident for at least 60 years and has served as
13 steward at Wagon Hill since the property was purchased by the town many years
14 ago. He looks forward to working with Commission members.

15

16 The Chair then seated Dwight Trueblood as a voting member in John Nachilly's
17 absence.

18

19 **IV. Approval of Agenda**

20

21 *Mr. Kelley MOVED to approve the agenda as submitted; SECONDED by Mr.*
22 *Trueblood; APPROVED unanimously, 7-0, Motion carries.* (This occurred after

23 Ms. Callaghan had started her land stewardship report and it was pointed out the
24 agenda hadn't been approved.)

25

26 **V. Public Comments:** There were none at this time.

27

28 **VI. Land Stewardship Update.** Sara Callaghan, Land Stewardship Coordinator.

29 Ms. Callaghan reported she recently led a site walk at Long Marsh Preserve for the
30 Land Stewardship Sub-Committee to discuss structures in need of repair and
31 replacement.

32 She's coordinating volunteer workdays for next month with several different groups
33 (ROTC/fraternities, etc.) and discussing a Milne workday with Diana Carroll.

34

35 Funding Request

36 Ms. Callaghan has a funding request for invasive species management at Doe Farm
37 this evening. As background, she said for the last several years the Trust for Trustees
38 has funded invasive species management of buckthorn at Doe Farm. Her memo to
39 the Commission explained why the Trust has been involved.

40 Invasive management is important as Doe Farm is an active tree farm, with the most
41 recent harvest in 2021. Harvesting opens up the canopy, allowing buckthorn to come
42 up in the understory.

43 Last year, the town contracted with Rockingham County Conservation District
44 (RCCD) to address some large buckthorn stumps. After cutting, new growth is best
45 addressed with foliar spray.

46 Chair Kritzer read Ms. Callaghan's funding proposal: to authorize the expenditure of
47 up to \$3500 from the Conservation Commission Fund for the management of
48 invasive species at Doe Farm.

49 In answer to questions from Mr. Slepian and others about the proposed herbicide,
50 Ms. Callaghan said the treatment area is away from trails. **Aquavite** (sp?) herbicide is
51 approved by the state for use near water or aquatic systems.

52 Nick Lanza briefly explained how the herbicide works and commented that it appears
53 RCCD is going through all the right steps and will likely close nearby trails during
54 spraying. They're seeking special permitting from the state, which Ms. Callaghan
55 said is being paid for by the Trust for the Trustees.

56 The state may reimburse the town for some materials. Chair Kritzer said they should
57 keep an eye on how much time is expended trying to get reimbursed “a couple
58 hundred dollars from the state.”

59 There was discussion about a long-term approach to timber harvesting at Doe Farm
60 and briefly, the long-term management of invasives. Ms. Callaghan said she’s
61 currently working with Charlie Moreno on updating the forest management plan for
62 the property.

63 ***Mr. Slepian MOVED to approve the expenditure of up to \$3500 at Doe Farm as***
64 ***requested; SECONDED by Ms. Hale; APPROVED unanimously, 7-0, Motion***
65 ***carries.***

66 In other business, Mr. Callaghan said she would like to do more education and
67 outreach on land stewardship and connect more people to conservation lands. She
68 proposed the formation of a sub-committee or working group. It could include
69 members of Parks and Rec, Land Stewardship and at-large community members. The
70 focus would be on creating and supporting programs.

71 After brief discussion, Mr. Kelley proposed that she come back to the Commission
72 next month with a written proposal outlining more specific tasks and the charge of
73 the sub-committee. There were several quick suggestions from the Commission
74 including: involve the Oyster River School District and make it multi-generational to
75 include older residents of Riverwoods as well.

76 **Public Comment:** Kara Hatalsky came forward to ask if there would be room for
77 Citizen Science projects and Ms. Callaghan replied yes. She’s looked at engaging the
78 community in the NH Butterfly Monitoring Network and other projects.

79
80 **VII. 12 Oyster River Road – Conditional Use.** Conditional use application to install
81 deck, patio, steps, retaining wall, and landscaping within the Shoreland Protection
82 Overlay District. Katherine Cook/New Heritage Designs, property owner. Ben Groves,
83 Rye Beach Landscaping, contractor. Map 109, Lot 80. Residence A District.

84
85 Applicant Katherine Cook came forward to explain her request to install a retaining wall
86 and steps to address major erosion issues in her side yard as well as a very steep slope to
87 the rear yard. Plans include installing stone steps, an upper patio and a lower permeable
88 patio at the top of the steps. She’s proposing a 12 x 12-foot deck to access the yard from
89 the house. The Commission had received the full set of plans.

90 Ms. Cook provided a planting list which is all native plants. The square footage for the
91 project would be about 624 square feet of permeable surface (deck and two patios) and
92 about 140 square feet of impermeable surface (steps and walkway).

93
94 Ms. Cook said runoff from the street and garage runs directly into the Oyster River, about
95 120 to 150 feet from the garage. The ground has started to wash out under the foundation
96 of the house.

97
98 Mr. Trueblood asked how waterflow would be controlled once a patio is put in at the end
99 of the driveway and Ms. Cook replied gutters have already been installed and there are
100 plans for a rain garden and drain. She does not believe there's a plan for overflow from
101 heavy rain.

102
103 Mr. Kelley clarified the application is before them this evening because all proposed
104 work would occur in the Shoreland Protection Overlay District, requiring Conditional
105 Use approval.

106
107 Ms. Cook said all proposed work is outside of the 50-foot waterfront buffer but is within
108 the 150-foot woodland buffer. It's within the 250-foot buffer for the Oyster River, which
109 is designated [scenic and wild]. She's in the process of seeking a Permit by Notification
110 from the state. Town approval would be pending state approval.

111
112 The Commission reviewed the four criteria for Conditional Use and reached consensus
113 that all conditions are being met by the applicant, with one concern noted below.

114
115 [Note: The applicant had responded to older criteria for Conditional Use supplied to her;
116 The Chair read the new criteria, noting they would not likely change her responses. Ms.
117 Cook will be asked to submit revised responses to new criteria to the Planning Board.]

118
119 Re: Criterion #2:
120 *The design, construction, maintenance and operation of proposed structures and*
121 *activities within the wetland and buffer will minimize soil disturbance and adverse*
122 *impacts to water quality to the extent workable.*

123
124 Mr. Trueblood expressed concern about the permeable layer under the patio. Plans say,
125 "Drainage to stormwater system as needed." It's unclear to him where the water is going.
126 He advised if the rain garden and patios are collecting water, they should not be sending
127 overflow to the waterfront.

128
129 Ms. Cook replied they are trying to address it as best as possible without adding more
130 drainage systems. The goal is to manage a majority of the water. The current plan will be

131 a drastic improvement from what is there now. Her hope is plantings with stronger root
132 systems will help control water flow.

133

134 ***Ms. Hale MOVED to recommend to the Planning Board approval of the application,***
135 ***provided that the applicant revises her responses with the new criteria for the Planning***
136 ***Board; SECONDED by Ms. Robbins, APPROVED unanimously, 7-0, Motion carries.***

137

138

139 **VIII. Land Stewardship Committee.** Discussion with Ann Welsh, chair of the Durham
140 Land Stewardship Committee about the role of the committee. Proposal to add alternates
141 to the committee.

142

143 Ann Welsh came forward and gave background information about how the Land
144 Stewardship Sub-Committee was formed. She said unlike most towns, Durham has split
145 up management of public lands among different groups.

146

147 The Sub-Committee manages trails and invasives and handles complaints from
148 neighbors; They've established purposes for all properties, depending on easements and
149 deeds. Their major project right now is trying to establish the cost of maintenance for
150 each property.

151

152 Ms. Welsh said the Sub-Committee is currently missing three representatives for most
153 meetings, often making it difficult to reach a quorum (defined as five). She's here this
154 evening to ask for two alternates, for the three members at large. Part of the issue in
155 finding members is that the Sub-Committee holds morning meetings, largely to
156 accommodate town employees.

157

158 Land Stewardship Coordinator Sara Callaghan said Town Administrator Selig told her
159 that alternates could represent any of the committees and commissions represented on the
160 Sub-Committee, providing they report back to that respective committee/board.

161

162 Ms. Callaghan noted that any change to the membership structure of the Sub-Committee
163 requires a vote from the Conservation Commission. Essentially, the CC approved the
164 original structure and is being asked to add two alternates, to replace at-large members or
165 other town committee members, if necessary.

166

167 Sally Needell came forward to ask if members need to be appointed by the Town
168 Council, but it was clarified members on the Sub-Committee are approved by the
169 Conservation Commission.

170

171 *Ms. Kelley MOVED to authorize the Land Stewardship Sub-Committee to add up to*
172 *two alternates to their Sub-Committee; SECONDED by Ms. Robbins, APPROVED*
173 *unanimously, 7-0, Motion carries.*

174
175 Before voting took place, Mr. Behrendt clarified: alternates should be able to step in for
176 any sub-committee member. However, if it's for a board member, the alternate should
177 report back to the board they are representing.

178 **IX. Wetland and Shoreland Overlay District – Zoning Amendment.** Discussion
179 with Neil Slepian and Dwight Trueblood about proposed new Wetland and Shoreland
180 Overlay District (WSOD) to replace the current Wetland Conservation Overlay District
181 (WCOD) and Shoreland Protection Overlay District (SPOD). A Committee appointed by
182 the Conservation Commission has been working for over a year to rewrite the WCOD
183 and SPOD. The committee now has a draft to present to the commission.

184 The Chair said Sub-Committee members Paul Rasmussen and Sally Needell are present
185 this evening and may have input.

186 Mr. Slepian said he and Mr. Trueblood will start with an overview and then give
187 members time to look over specifics on their own and come back for discussion and
188 hopefully a vote next month.

189 The Sub-Committee, set up at the request of the Conservation Commission, was
190 originally charged with updating Conditional Use criteria. That work was completed and
191 approved.

192 Sub-Committee members then decided to review the entire WCOD and SPOD
193 ordinances, to make them more understandable to applicants, easier to administer and
194 eliminate ambiguous language.

195 As the Sub-Committee reviewed the ordinances, it became clear there was a lot of
196 overlap between the two, so the group decided to combine them. The result is the
197 Wetland and Shoreland Overlay District (draft) being introduced here tonight and which
198 members are asked to come back prepared to discuss next month.

199 Mr. Slepian said Sub-Committee members also revised some language to reflect updated
200 science and environmental knowledge. The group consulted NOAA, NH-DES and other
201 sources. They reviewed other towns' shoreland and wetland ordinances in the Great Bay
202 watershed as well.

203 The Sub-Committee adopted a statement to reflect why they believe their work is right
204 for this time, which Mr. Slepian read:

205 *We believe that it improves the ecological function and promotes better protection*
206 *for our precious wetlands in the town of Durham. It also incorporates current*
207 *scientific and environmental knowledge that wasn't available or considered when*
208 *the previous ordinances were adopted. We also believe it strikes a balance*
209 *between resource protection and practical application of regulations in the*
210 *ordinance, i.e., the regulation should meet our goal as a Commission without*
211 *being unduly onerous to applicants or challenging or impossible to achieve.*

212 Mr. Slepian noted that both Town Planner Michael Behrendt and Paul Rasmussen were
213 invaluable in providing knowledge about what is workable, from an applicant's
214 perspective.

215 **He named Sub-Committee members:**

216 Emily Friedrichs (Planning Board), who is now on Town Council;
217 Paul Rasmussen (Chair/Planning Board)
218 Sally Needell (Chair/Town Council and former chair of CC)
219 Dwight Trueblood and Neil Slepian (Conservation Commission)
220 Michael Behrendt served as a staff member on the Sub-Committee.

221 Chair Kritzer asked if the group operated by consensus or if they took votes and Mr.
222 Slepian said it was by consensus.

223 Mr. Trueblood then came forward to explain some of the specific proposed changes. He
224 encouraged members to review the entire document closely on their own.

225 Highlights of the proposed ordinance:

- 226 • Emphasizes use of naturalized and native vegetation to help mitigate any
227 disturbances from development.
228
- 229 • Eliminates 150-foot setback for sewer and septic lines.
- 230 • Adds buffer requirements for salt use and snow storage.
231
- 232 • Adds expansion of non-conforming fences and structures and clarifies the
233 Conservation Commission's review process.
234
- 235 • Excludes outdoor recreational facilities from Wetland and Shoreland Overlay
236 Districts.
237
- 238 • Clarifies dumping of snow under Prohibited Uses.

239 Mr. Trueblood said the biggest changes from an environmental standpoint were based on
240 a NOAA study, “Buffers on the Bay,” which examined buffers around water. (See
241 bufferoptionsnh.org)

242 In order to protect the temperature of the Bay, according to the study, at least 30-feet of
243 buffer is needed to mitigate runoff; To mitigate pollutants, 98 to 100-feet are needed. To
244 reduce runoff and stabilize channel banks, about 164 feet are needed and finally, to
245 provide habitat for terrestrial wildlife, about 330 feet are needed.

246

247 **Proposed Buffer Changes:**

248 Mr. Trueblood said the Sub-Committee tried to balance the ecological benefit of
249 widening buffers with what is reasonable and practical to accomplish.

250 Bogs and prime wetlands: Increase buffer from 150-feet to 200 feet.

251 Vernal pools: Increase buffer from 100 feet to 150 feet.

252 Non-tidal wetlands in RR and RC Zones: would remain at 100-feet.

253 Non-tidal wetlands (in all zones except core commercial): Increase by 25-feet.

254 Core commercial zone: Currently at 75-feet; recommendation is to reduce to
255 within 30 feet of College Brook.

256 Tidal wetlands: Mr. Trueblood said the Sub-Committee couldn’t reach consensus.
257 Current buffer is 100 feet; Buffers on the Bay recommends 200 to 330 feet. They
258 recommend the entire Commission discuss further.

259 Tidal Waters: Buffer currently at 125 feet. The group thinks it should be between
260 200 to 330-feet but recommends further discussion.

261 Lamprey River and Durham Reservoir: Proposed to increase from 120-feet to 200-
262 feet, to protect drinking water.

263 Other perennial non-tidal rivers and streams, including Oyster River above the
264 dam, (excluding College Brook and Pettee Brook) – Increase buffer from 75 to
265 150-feet.

266 College Brook and Pettee Brook: In all zones other than core commercial would
267 increase from 25 to 100-feet.

268 College Brook and Pettee Brook in core commercial zone: Increase from 25 to 30
269 feet.

270 Mr. Burton asked if current uses are grandfathered and Chair Kritzer said they can remain
271 in use until the property owner seeks to make a change (add or modify a structure, for
272 example).

273 Sally Needell came forward to say one of the Sub-Committee's considerations was
274 climate change as it pertains to tidal waters. Sea levels will continue to rise. That's why
275 they proposed increasing to 30 feet from 25. She encouraged members to review general
276 buffer requirements for the SPOD, particularly the part on vegetation (Section 175-61).

277

278 **Public Comment:**

279 Kara Hutulsky, Durham resident, came forward with questions/comments. She asked
280 why the proposed buffer zone is smaller for vernal pools than wetlands when vernal pools
281 are generally more vulnerable eco-systems. Mr. Trueblood said it was feasibility. Vernal
282 pools are typically small and making a huge buffer would be difficult on residential lots.

283 She asked when was the appropriate time in the process to speak in favor of any of the
284 recommendations and the reply was she could speak now or wait until the Planning
285 Board holds a public hearing, since that will be a more finalized version.

286 Ms. Hutulsky said she's part of a UNH lab working with saltmarsh sparrows, which are
287 endangered. They nest only in tidal saltmarshes. If that habitat disappears, there will be
288 no more birds. She supports increasing the buffer zone in tidal marshes.

289 Mr. Kelley questioned the impact of the proposed changes on Cedar Point, which has a
290 high density with small lots. He thinks it may bring their setbacks to Route 4. (He later
291 clarified his remark, saying it was an exaggeration, other than at the intersection at Back
292 River Road.) He asked if the Sub-Committee had discussed how many residents would be
293 in non-conforming use if these changes were adopted and later Mr. Rasmussen replied
294 they had not discussed it.

295 Chair Kritzer said if the new ordinance passes, it will increase the number of property
296 owners needing to go through a review process with both the Conservation Commission
297 and the Planning Board.

298 Mr. Slepian said in some cases it will be more difficult for people to get a conditional use
299 permit. Mr. Kritzer said he's not sure he agrees. In his experience, Conditional Use
300 Permits are generally granted. These changes will add to the workload of the
301 Conservation Commission and Planning Board but shouldn't impact how many permits
302 are granted.

303 Mr. Rasmussen came forward to encourage Commission members to look at proposed
304 changes to Permitted Use A, Permitted Use B and Conditional Use. He believes when

305 those changes are taken into consideration, Mr. Slepian’s statement is accurate: it may be
306 more difficult for some homeowners to obtain permits.

307 Mr. Trueblood noted the town has aspirational goals to protect the environment, with a
308 strong focus on Great Bay which is already under stress from nutrients, reduction in eel
309 grass, and habitat fragmentation. He said, “We were trying to mitigate those things and
310 get us toward where we want to be as a town.”

311 Mr. Burton asked what would happen if a property changes ownership and Mr. Behrendt
312 said that doesn’t affect its status. Anything currently constructed on the property legally
313 is grandfathered. If a homeowner has undeveloped woodland on their property leading to
314 Little Bay, the new standards will come into play.

315 Chair Kritzer emphasized nothing would have to be torn down. These changes would
316 affect only new patios, sheds, changes to driveways and additions to houses, etc.

317 Mr. Burton asked why buffers would need to be changed to account for sea level rise, if
318 we can assume the buffers will move with the wetlands. Ms. Needell said the larger
319 buffer will provide more protection so development in the near future wouldn’t encroach.

320 Chair Kritzer noted the buffers, by themselves, aren’t sufficient to protect water bodies.
321 But combined with other measures, they will have an impact.

322 Wrapping up the discussion, the Chair expressed high praise for the work of the Sub-
323 Committee. He said they did great work and should be applauded. Discussion will
324 resume next month once members have had a chance to review the proposed changes
325 more closely.

326 X. Review of Minutes: January 26, 2024

327 ***Mr. Kelley MOVED to approve the minutes of January 26, 2024; SECONDED by Mr.***
328 ***Slepian; APPROVED, 6-0-2, Motion carries.***

329 XI. Other Business:

330 Mr. Burton said he’s watching the marsh restoration project at Wagon Hill Farm. The
331 city of Portsmouth owns an easement across Wagon Hill Farm for 75 percent of its
332 water supply. Two pipes in danger of failing are in the process of being replaced.
333 Original plans called for putting in a 40-foot access road along the driveway at
334 Wagon Hill, but after negotiations with the town, the road was moved. Mr. Burton
335 said the laydown area is formidable and in his opinion, it will tough to restore the area
336 to its original use.

337 Mr. Behrendt said Public Works is keeping a close eye on it but Mr. Burton says he
338 has not seen them there. Mr. Behrendt will follow-up.

339

340 **Vacancies on the Commission**

341 In other business, Chair Kritzer said there will be two vacancies on the Commission
342 soon. He's had three candidates express interest and all of them would be outstanding
343 additions. All three have different skill sets that are highly needed. He asked if the
344 Commission be expanded.

345 Mr. Behrendt said the Commission could be expanded by Charter amendment. There
346 are currently seven regular members and three alternates.

347 Generally, the Chair recommends new members to Town Council and they vote to
348 appoint/not appoint. Mr. Behrendt suggested Mr. Kritzer pass on the three names to
349 TC and let them decide. Mr. Kritzer expressed preference for the Commission to
350 decide how to handle three qualified candidates for two open seats.

351 Vice-Chair Hale noted the Land Stewardship Committee needs new members and
352 possibly one of the candidates could serve there.

353 Mr. Behrendt noted that a vote on a charter change to expand the Commission
354 wouldn't happen until next spring.

355 Chair Kritzer then reiterated that he's stepping down as chair, following the April
356 meeting. Anyone interested in making a nomination or being nominated should speak
357 up. Mr. Behrendt said members can speak outside the meeting to discuss their interest
358 or recruit another member for the position.

359 It was decided that voting will likely take place at the May meeting.

360 XII. Roundtable. Updates from Conservation Commission members.

361 Mr. Burton said Town Council has four new members and he feels confident in the
362 present makeup of the Council.

363 XIII. Adjournment

364 ***Mr. Trueblood MOVED to adjourn at 9:37 p.m.; SECONDED by Mr. Kelley,***
365 ***APPROVED unanimously, Motion carries.***

366

367 Respectfully submitted,
368 Lucie Bryar, Minute Taker
369 Durham Conservation