

These minutes were approved at the December 23, 2024 meeting.

DURHAM CONSERVATION COMMISSION
Monday, October 28, 2024
DURHAM TOWN HALL, COUNCIL CHAMBERS
7:00 p.m.

MEMBERS PRESENT: Dwight Trueblood (Chair); Wayne Burton (Town Council Rep); Richard Kelley (Planning Board Rep); Nick Lanzer; John Nachilly; and Neil Slepian. Alternates: Jacob Cragg, Anne Lightbody, and Steve Moyer.

MEMBERS ABSENT: Erin Hardie Hale (Vice Chair)

ALSO PRESENT: Michael Behrendt, Durham Town Planner

I. Call to Order

Chair Dwight Trueblood called the meeting to order at 7:00 p.m.

II. Land Acknowledgement Statement

The Chair read the Land Acknowledgement Statement as adopted by the town.

III. Roll Call and Seating of Alternates

Roll call attendance was taken and the Chair seated Alternate Anne Lightbody as a voting member for Erin Hale this evening.

IV. Approval of Agenda

John Nachilly MOVED to approve the agenda as presented; SECONDED by Neil Slepian; APPROVED unanimously, 7-0, by a show of hands, Motion carries.

V. Public Comments: None this evening.

VI. Land Stewardship Update: Request for approval of appointment of Sara Callaghan as an alternate on the Land Stewardship Committee.

The Chair said while Ms. Callaghan is no longer Durham's Land Stewardship Coordinator, the Land Stewardship Committee has requested that she be appointed as an alternate.

Mr. Kelley asked if she's a Durham resident and the response was yes.

Mr. Kelley MOVED to appoint Sara Callaghan as an alternate on the Land Stewardship Committee; SECONDED by Mr. Lanzer; APPROVED unanimously, 7-0, by a show of hands, Motion carries.

Ms. Lightbody said Ellen Snyder (former Land Stewardship Coordinator) had been invited to speak during this portion of the meeting regarding collaboration between Newmarket and Durham's Conservation Commissions. Mr. Behrendt said she doesn't appear on the agenda because it was decided after the agenda had been set. The Chair invited Ms. Snyder to come forward and apologized for the confusion.

Ms. Snyder introduced herself as Chair of the Newmarket Conservation Commission and said it's good to be back in Durham. She'd like to share some activities being planned and invite the two commissions/towns to collaborate, if there's interest:

- Turtle Fest 2025 (first annual) – will take place May 10. Turtles are having issues with population due to road crossings. Designed to educate the public, the event will include a field trip, indoor talks and exhibits. Newmarket Library will be involved and Ms. Snyder said possibly Durham's Library could do something.

Mr. Lanzer suggested they reach out to Author Sy Montgomery who lives fairly local and has published a book about turtles.

- Salamander Crossing Brigade: they introduced this in Newmarket last year, inspired by the Harris Center in southwestern NH. Trained volunteers go out each spring to assist salamanders and frogs crossing roads to get to breeding grounds. The town of Durham is invited to partner with Newmarket on this, if they wish.
- Newmarket is wrapping up their update to Prime Wetlands mapping, first done in 2009. Wetlands Scientist Mark West updated the mapping and the town is now looking to hire him to map vernal pools. She suggested Durham could collaborate in the effort, since the two towns share wetlands. Newmarket is looking into pursuing grant funding from the Piscataqua River Estuaries Partnership (PREP).

Chair Trueblood said this might be an interesting idea since Durham's Conservation Commission has discussed lack of knowledge about vernal pools. He asked about a new NH-DES database of wetlands in coastal areas and Ms. Snyder said it doesn't include vernal pools.

Mr. Behrendt asked for more information about the vernal pool project. Would it be a matching grant? Can she estimate how many vernal pools there are? 100? 1,000?

Ms. Snyder said she doesn't know the number, but not in the thousands. There are a lot of vernal pools on Durham Point Road near the Sweet Trail, for example. The tools used would be LIDAR, aerial photos and field work. She believes it's the role of the Conservation Commission to know where wetlands are located. To her knowledge, PREP doesn't require matching funds.

If they pursued this project jointly, each town would have individual costs billed, determined by the consultant. When asked to estimate cost, Ms. Snyder guessed about \$10K.

Mr. Slepian asked if she's talking about both publicly owned land and privately owned land and she said yes. They would have to get permission from individual landowners.

There was further discussion about prime wetlands, including how restrictions around them can sometimes impact development and how DES restrictions have changed.

The Chair thanked Ms. Snyder for all the information. There were follow-up questions about how to get in touch and timelines for the vernal pool mapping project.

Mr. Burton asked if she foresaw any effects to Newmarket's dam since Durham is removing its dam. Ms. Snyder said she'd prefer not to get into the topic tonight; she's spoken publicly in the past about her support for the project. The Chair concurred that there wasn't sufficient time to discuss this.

VII. Jackson Laboratories – Reconfiguration of Existing Dock Structure. 85 Adams Point Road. Courtesy presentation from UNH Jackson Laboratories for reconfiguration of existing dock structure. Map 229, Lot 1, owned by NH Fish & Game. Presented by Luke Taylor, Environmental Permitting Specialist, T.F. Moran.

Luke Taylor of T. F. Moran introduced himself and said the project is designed to meet all minimum NH-DES standards. It's a reconfiguration and slight expansion of an existing float system.

They've done due diligence and coordinated with the Natural Heritage Bureau, NH Fish & Game, the Harbormaster, and U.S. Fish and Wildlife Service. There are 337 square feet of temporary impacts and 980 square feet of permanent impacts. They will implement "avoidance techniques" to protect Great Bay.

One pile, to be installed using a low-impact vibratory hammer, is for research instrumentation rather than structural support.

Mr. Taylor said along with along with marine contractors, they've developed a turbidity sleeve to address turbid water that is kicked up from installing piles. The Chair asked where the turbid water ends up and Mr. Taylor replied he's not exactly sure, but it's collected on a barge.

Mr. Kelley asked about the timeline for the project and Mr. Taylor replied it's dependent on approval from the state (which has 60 days to respond), but hopefully next spring. T. F. Moran is doing the permitting; the work will be done by Riverside and Pickering Marine contractors. It was confirmed all work will be done from a barge.

The Chair thanked Mr. Taylor for his presentation.

VIII.4 Riverview Court – Conditional Use Application. Conditional use in the Shoreland Protection Overlay District for an existing single-family house for structures to be located within the 125-foot setback line: expansion of existing driveway, retaining wall, shed and buried electric line that currently runs overhead. Arthur McManus, property owner. Chris Guida, Fieldstone Land Consultants, wetland and soil scientist. Map 214, Lot 11. Residence Coastal District.

The Chair said the Commission did an informative site walk last Saturday, but there weren't enough members present for a quorum.

Arthur McManus, property owner, came forward. He said they're hoping to expand the driveway. A garage is being rotated 90-degrees, taking advantage of an existing utility pathway. He acknowledged suggestions made during the site walk for a swale and rain garden are a good way to protect from runoff.

The shed was originally proposed closer to the water but based on suggestions, he's willing to push it closer to the road. With the new garage, they're able to move the 12 x 16 shed closer to the road without having it forward from the house.

Re: the retaining wall: Mr. McManus said there's a steep incline from a patio-covered porch to level ground. The wall would be no more than 2-to-3-feet and have a set of stairs. After getting a suggestion during the site walk regarding native plants, he's consulted the state website for planting ideas.

Mr. Slepian asked if the retaining wall is 25-feet from the Oyster River (as it appears on the plans) and if it's a new structure. Mr. McManus confirmed it's 25-feet and said it's new but will be integrated into an existing structure – the covered porch south retaining wall.

There was brief discussion about plants on top of the retaining wall and plantings between the wall and the river. The homeowner said he plans to use ground cover on top of the retaining wall so as not to obstruct water views. The area down to the river will be woodchips and then native plants as you get closer to the river.

It was confirmed that Mr. McManus has changed his original plan showing a one-cut driveway and, after discussing it with his contractor, is now proposing a circular driveway.

Ms. Lightbody asked for a point of order. She said since the garage hasn't yet been approved, it seems odd to be discussing the driveway. She's not sure if this question should be directed to the Town Planner. How should the Commission be thinking about their decision this evening?

Town Planner Michael Behrendt said he hasn't yet had a chance to look over the numbers but he thinks the Code Enforcement Officer has done that. Assuming it meets town requirements, the driveway would fit into plans for the garage.

Ms. Lightbody asked if they should proceed for now with the assumption that the garage will be approved and Mr. Behrendt said yes. She noted both plans show a large driveway, with all runoff draining into the Oyster River. She'd like to know the specifics for the plantings and run-off. She thinks the homeowner is headed in the right direction, but not quite there yet with specifics. She asked if he'll be talking to a landscaper.

Mr. McManus said he plans to talk to a landscaper at some point but is also looking to the Commission for guidance about plants. When the town seems okay with the plans, then he'll get more specifics.

Mr. Kelley said normally the Commission would see a much more detailed engineering plan at this stage.

Mr. Behrendt noted there a number of details that would be helpful to have, including design and location of the rain garden and swale and more information about plantings. Mr. Kelley added information about "temporary erosion control" as well. Mr. McManus said all notes will be transferred to a new engineering drawing before it goes to the Planning Board

Throughout the lengthy discussion, Mr. Kelley advised the homeowner about what the Planning Board will be looking for when reviewing his application, including:

- More information about temporary sediment and erosion control and a clear definition of where excavation materials will be placed during construction.
- Specifically how temporary impacts to the river will be mitigated during construction. (Mr. McManus replied there's already a silt fence and there will be a fabric mat installed.)
- Why there's a need for so much impervious surface (from the proposed circular driveway) in the buffer.
- The homeowner needs to make his strongest case for his plans on the Conditional Use Permit application.

The Chair advised the homeowner to hire a competent contractor to design and install the rain garden. It has to be scaled correctly with a gravel area to hold water until it absorbs into the soil or is taken up by plants.

Mr. McManus asked if the entire 40-foot area between the house and the driveway should be rain garden and Mr. Trueblood responded he's not an expert; that's why the homeowner is being advised to hire a professional. He added the choice of plants is important because there's a six-foot slope that is fairly exposed. He mentioned sea level rise and said if there's a big storm, winds could erode the area.

Mr. Burton talked about an ongoing erosion control project at Wagon Hill Farm and The Chair described what has happened during storm events there: water comes in and

undercuts trees, which then fall into the river. The homeowner should be aware there's potential for that to happen on his property.

Mr. Behrendt said he and Audrey Kline [Code Administrator and Building Official] have been working with Mr. McManus. He thinks it would benefit all involved if the homeowner would bring in a professional to prepare detailed plans. He asked if he had plans to hire a wetlands scientist or other expert.

Mr. McManus said he planned to hire a professional at an appropriate time. He thought he had more time to work out details and he hoped the Planning Board would find the current plans for the driveway and garage acceptable. He expected to work later with the town on erosion control.

Mr. Behrendt said the Conservation Commission usually has those details in front of them [before making a recommendation for a Conditional Use permit}. He asked Mr. McManus if he were to get feedback from the Commission tonight and then hire a professional, would he be able to come back with new plans at the December meeting.

Mr. McManus said it's not desirable, but he'll do whatever is right. He thinks he's incorporated enough guidance from the Commission (on the site walk) into the drawings. He's dedicated to making it happen.

Mr. Behrendt said the other alternative would be if the Commission is comfortable providing specific direction to the homeowner tonight, he could then hire a professional and bring detailed drawings to the Planning Board at the December 13th meeting.

Chair Trueblood expressed his view about what's lacking from the plans and asked commissioners if they have enough information to move forward with their recommendation to the Planning Board.

Mr. Nachilly concurred there are a lot of details missing. The homeowner is looking to add a lot of impervious surfaces (roof runoff, driveway, etc.) and the Commission doesn't know if the proposed good practices are sufficient.

Mr. Slepian agreed with Mr. Kelley and Mr. Nachilly that there's not enough information to make a recommendation. This was the consensus of the Commission.

There was further discussion about the proposed driveway. Mr. Behrendt asked if there's a way to reduce the width of the driveway to approximately 40 feet as you pull away from the garage and Mr. McManus said they need the ability to back out.

The homeowner asked for clarification on the direction he had received from the Commission thus far. What information is still missing but deemed necessary?

Mr. Nachilly said Mr. McManus also needs to address the pitch of the roof and where the water from the cul de sac will go. Is there going to be mitigation along the edge of the driveway or is it going to run right in.

Mr. Behrendt said a good landscape architect would be able to lay it all out and he can assist Mr. McManus in finding one.

There was discussion about next steps in the process, i.e., proceeding with the scheduled public hearing at the Planning Board on December 13th or coming back to the Conservation Commission first. Mr. McManus was advised to come back to the Commission in November and then continue with the Planning Board's public hearing in December.

Mr. Behrendt asked the Commission if they could provide more guidance to Mr. McManus this evening, particularly regarding the circular driveway vs. one with a single access point.

The Chair said he thinks a circular driveway makes more sense because he noted during the site walk that a single entrance driveway would likely require two pads. A circular drive with a rain garden and swale would mitigate runoff and make it easier to exit the property.

Ms. Lightbody agreed, but added the circular driveway looks large; if there's any way to reduce that, it would be helpful. Due to the home's proximity to the water, she asked if anything could be done to the existing house roof to mitigate runoff.

Mr. Kelley asked if the Commission's jurisdiction stops at the setback line. Assuming yes, he suggested to the homeowner that if he prefers two driveways, he should bring that plan forward.

Mr. Behrendt confirmed the Commission's jurisdiction stops at the setback line, but said they have a say on whether a [circular driveway] is the optimal solution. Mr. Kelley

advised Mr. McManus to minimize what's on the south part of the line as much as possible, since the Planning Board will scrutinize this.

There was further discussion about the square footage of impervious surfaces and potential runoff from the circular driveway.

Mr. McManus thanked the Commission for their feedback and information.

IX. Wetland and Shoreland Overlay District – Zoning Amendment. Continued discussion about proposed new Wetland and Shoreland Overlay District (WSOD) to replace the current Wetland Conservation Overlay District (WCOD) and Shoreland Protection Overlay District (SPOD).

Chair Trueblood said while he and Mr. Slepian (who both worked on the ordinance with others) weren't at the previous meeting, he reviewed the minutes. If there's no objection, he proposes zeroing in on some items still "hanging out" there before moving on to different sections of the amendment.

With no objection, Mr. Slepian led the discussion. He thanked those who commented at the last meeting and said he's concerned about two areas: comments indicated in green on the draft and the discussion about forestry. Mr. Behrendt had pointed out inconsistencies between 175.61-A on page 6 under "native and naturalized vegetation" and points 3 and 4 where it says, "forestry is permitted."

Mr. Lanzer noted under Permitted Use A, there's no Commission input or review needed, while on page 6, items 3 & 4, it says "no trees over six inches in diameter... can be removed." Number 4 says no more than 50 percent of trees can removed. He said, "On the one hand, we're dictating what should be done and on the other, we're saying, 'go ahead with forestry.'"

There was lengthy discussion on this topic, much of it focused on the distinction between what constitutes forestry vs. basic homeowner landscaping activities.

Mr. Lanzer, who's a licensed forester, said essentially forestry is an agricultural practice focused on the growing and perpetuation of forests. It involves looking at the regeneration of trees; crown spacing; wildlife habitat, water considerations, timber harvesting, etc. Most homeowners are simply doing landscape maintenance or looking to improve their water views, not practicing forestry.

Mr. Slepian asked Mr. Lanzer for clarification on Items 3 & 4: Is he saying those items under “native and natural vegetation” don’t count as forestry? Mr. Lanzer said the area needs to be large enough to consider *all* aspects of forestry, which he enumerated.

Mr. Trueblood said the Sub-Committee included 3 & 4 under 174.61 to prevent people from razing all the vegetation in the buffer so they could have a view of the Bay or the river. The intent was to give homeowners a little flexibility, but at the same time prevent them from doing something that doesn’t take into account the ecological benefit of existing vegetation. He commented “forestry is a very different large-scale operation” and Mr. Lanzer agreed. Later he added that most foresters don’t work on areas under 10 acres.

Mr. Trueblood noted section D addresses forestry activity within the WSOD with a simple statement saying: “Any forestry activity within the WSOD shall be conducted in accordance with the Basal Area Law RSA 227-J:9 and shall follow best forest management practices.” He’s unclear if the intent is to leave items 3 & 4 alone or delete 3 & 4.

After lengthy discussion, the Commission ultimately decided to amend the draft as follows: Move D on page 8 (regarding forestry) to section A (native and naturalized vegetation), adding Forestry as a separate letter. Subsequent sections will be re-lettered

Topics brought up during discussion included: limiting activities based on parcel size; the Commission’s purview if a homeowner has a timber management plan by a licensed forester; how to address the possibility that homeowners could remove 50 percent of trees each year in order to achieve a clear view over time.

Mr. Lanzer also said homeowners with contiguous parcels sometimes “practice forestry” together. The Commission discussed how buffers provided within the Basel Forestry Law should impact local ordinances and questioned if the town could legally be stricter than state law.

Mr. Behrendt suggested changing the language in Section A exempting review for certain provisions from 15-feet to 25-feet of an existing family home in order to give homeowners more autonomy over their properties. Mr. Cragg said a 10-foot difference would not be enough to appease homeowners upset with the proposed ordinance.

Due to the late hour, the Chair asked for consensus to wrap up discussion on this item until the next meeting

X. Plant Species in Site Plan Regulations. Continued discussion about list of plant species in Site Plan Regulations, including list of invasive plants. **TABLED**

XI. Review of Minutes: September 23, 2024

Ms. Lightbody MOVED to approve the minutes of September 23, 2024; SECONDED by Mr. Burton; Motion APPROVED, 2-0-5 by a show of hands, Motion carries -- with Ms. Lightbody and Mr. Burton voting in favor and five members who were not in attendance abstaining: Dwight Trueblood; Richard Kelley, Nick Lanzer, John Nachilly and Neil Slepian.

Mr. Lanzer asked how many votes are needed and Mr. Behrendt said only one vote in the affirmative is needed to approve minutes.

XII. Other Business

XIII. Roundtable

Ms. Lightbody said the Commission is sponsoring a talk on Lichenology at Stevens Woods on November 10th that looks interesting.

Mr. Burton said Town Council had an interesting conversation at their last meeting about certain properties that fall under multiple rules, including the one discussed here tonight as well as the Keefe property, which is being proposed for workforce housing. He encouraged Commissioners to watch the video.

XIV. Adjournment

Mr. Kelley MOVED to adjourn the meeting at 9:29 p.m.; SECONDED by Mr. Slepian and APPROVED unanimously by a show of hands, 7-0, Motion carries.

Respectfully submitted,
Lucie Bryar, Minutes Taker
Durham Conservation Commission