

These minutes were approved at the January 27, 2025 meeting.

DURHAM CONSERVATION COMMISSION
Monday, December 23, 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, and Neil Slepian. Alternates: Jacob Cragg and Steve Moyer.

MEMBERS ABSENT: Erin Hardie Hale (Vice Chair), John Nachilly, and Anne Lightbody (Alternate)

ALSO PRESENT: Michael Behrendt, Durham Town Planner

I. Call to Order

Chair Dwight Trueblood called the meeting to order at 7:01 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 Alternates Jacob Cragg and Steve Moyer as voting members this evening.

IV. Approval of Agenda

The Chair asked if there were any changes or additions to the agenda and hearing none, asked for a show of hands to approve the agenda. The agenda was APPROVED unanimously, 6-0.

V. Public Comments: None this evening.

VI. Land Stewardship Update:

The Chair invited Veronique Ludington, the new Land Stewardship Coordinator, to introduce herself. Ms. Ludington said she's worked as Assistant Stewardship Coordinator at Great Bay National Estuarine Reserve for the last three years. She looks forward to working with the Commission on town conservation lands.

VII. 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.

While technical issues with Mr. Guida on zoom were being resolved, Mr. McManus gave a brief update on the new plans submitted since he last appeared before the Commission in October.

He mentioned some of the changes, including reducing the width of the driveway; siting the garage closer to the house, moving the shed closer to the road; adding a catch basin instead of swales to collect runoff from the driveway and also shared some details about the rain garden.

Commission members asked a number of questions and Mr. Guida was able to join the conversation remotely. He introduced himself as a certified wetlands and soil scientist and septic designer.

Commissioners' questions focused on a number of areas, including plantings; the rain garden; the addition of a Cape Cod berm; the topography of the property; the proposed new septic system, the ground water table, and driveway runoff.

Mr. Behrendt recapped that the applicant is requesting a conditional use permit for six "structure-type" items inside the 125-foot buffer from the Oyster River shoreland. The conditional use request is for a portion of the driveway, retaining wall; shed; burying the electric; drainage structures, and boulder wall above the driveway.

He said the garage addition shown is not within their purview; it's already allowed under a provision in the zoning ordinance because it meets the percentage of allowable expansion.

In answer to questions, Mr. Guida detailed the hard-pan soil conditions as they relate to the seasonal water table (which he said is shown to be non-existent on test pits) and he explained the design of the new septic system. He said it needs to be raised up so there's enough area beneath it to treat the effluent before it gets into an area that is ledge or otherwise restrictive.

Mr. Behrendt mentioned that he received a request from one of the abutters asking the Commission to not allow burying of the electric out of concern that more trees would need to be removed. It was clarified that burying the electric would not follow current utility lines and wouldn't involve removal of any trees.

With no further questions, the Chair called for the Commission to review the four Conditional Use Criteria (summarized):

1. There is no alternative design and location on the parcel for the proposed project that would have less adverse impact on the WCOD/SPOD and overall ecological values that would be workable and reasonable for the applicant to utilize.

2. Design, construction, maintenance and operation of proposed structures within the SPOD and buffer will minimize soil disturbance and adverse water impacts to the extent workable. Mr. Slepian said they need to trust construction is going to be done carefully. Mr. Kelley added maintenance and operation of the catch basin needs to be addressed with periodic removal of sediment. The Chair added plants need to be maintained for the rain garden to function properly.

3. Mitigation and restoration activities of area to be disturbed to allow for the site to perform the functions of the water resource for the SPOD and buffer to the extent workable. Planting of native and naturalized vegetation shall be included as appropriate.

4. Proposed project will not have substantial adverse impacts to known wildlife, rare and endangered species, wildlife corridors, etc. Applicants are not required to submit supporting documentation unless required by the Planning Board. The Chair said no rare species have been identified; he added if this was new construction, it probably would not be approved in this location. There's remaining wooded area that will provide habitat and the applicant is doing a lot to upgrade the septic; adding a catch basin and rain garden.

There was consensus from the Commission that the applicant had met all four criteria.

Mr. Kelley asked for clarification on the Conservation Commission's role in relation to the Planning Board, since he hasn't been on the board very long. Mr. Behrendt replied the Commission's purview is to give their opinion to the Planning Board as to whether the four criteria have been met.

Mr. Kelley MOVED that the Conservation Commission finds that the four conditional uses in the SPOD have been met by the applicant and this should be conveyed to the Planning Board; SECONDED by Mr. Moyer; APPROVED unanimously by a show of hands, 6-0, Motion carries.

VIII. 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).

Commissioners had received an updated draft, with changes and notes from the Town Planner, reflecting their discussion from the prior meeting. The Chair invited Mr. Slepian to continue leading the discussion on the Zoning Amendment.

Mr. Slepian commended Mr. Behrendt for a nice job on what was previously done and for re-organizing sections of the amendment. He would like to review all changes on pages 6-7 again to be sure all are in agreement.

Mr. Lanzer made a suggestion to improve clarity by reducing the number of cross-references in this section of the amendment by inserting the original language. There was consensus to make this change.

Commissioners agreed to the Town Planner's recommendations on Items 3, 4 & 5 on page 6. As the resident forester, Mr. Lanzer was asked to weigh in on Item 7 regarding removal of trees. He said it was well-written and seems to encapsulate what was discussed.

Mr. Kelley asked, as a homeowner, if he could remove a tree if he determines it to be threatening. Mr. Behrendt said that determination needs to be made by the town's tree warden or his designee.

Mr. Cragg asked if the same holds true for anything that might threaten the environmental integrity of the site and Mr. Behrendt said yes.

There was brief discussion about the removal of trees within 50 feet of the house and 25 feet of the reference line. Mr. Slepian asked if there could be a conflict between the two. It was clarified the reference line is the edge of the wetlands and that would take precedence if there was a conflict.

There was discussion regarding activities homeowners are permitted to do (Permitted Use B) without coming before the Commission, including alteration of plantings in a wetland (pg. 9). Mr. Lanzer pointed out that two or more property owners can share a wetland and alteration of vegetation in a wetland by one owner can affect wildlife on an adjacent property. Members discussed when or if it's advisable to add plantings in a wetland or buffer.

There was lengthy discussion about lawns, i.e., what constitutes a lawn, what's the distinction between "lawn, sod, and turf," etc. Mr. Cragg shared a reference from an Easton, MA ordinance. Mr. Behrendt will revise the wording based on tonight's discussion and it will come before the Commission for review again.

The Commission reviewed the 14 items permitted without approval under Permitted Use B and Mr. Behrendt questioned if some items under Conditional Use should be moved to Permitted Use.

Specifically, he asked if the installation of utility poles should be moved from Conditional Use to Permitted Use B. Currently, utility companies need to come before the Commission for review if the activity will take place in a buffer. Mr. Slepian said he feels it's appropriate that utility companies meet the four criteria and there seemed to be consensus on this.

There was also discussion about temporary crossings for the maintenance or installation of utility pipes or lines; temporary coffer dams; and the expansion of non-conforming structures. On the latter item, Chair Trueblood pointed out the application reviewed tonight for 4 Riverview Court falls into this category. Expansion is allowed under Section 175-30-D.

Mr. Kelley read this section of the ordinance. As written, expansions of non-conforming structures would require Commission review and Planning Board approval.

In light of the late hour, the Chair recommended that they postpone further discussion on the amendment to the next meeting and move on to other agenda items.

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

Updated plant lists were distributed to Commission members. The Chair said Mr. Behrendt added five additional invasive plants under prohibited plants: Burning Bush, Siberian elm, garlic mustard, Morrow's honeysuckle and Kudzu.

Mr. Lanzer said when this was first brought up by Sara Callaghan (the previous Land Stewardship Coordinator), there was discussion about prohibiting all terrestrial or aquatic plants on the NH Comprehensive Invasive Plant List.

He said the State lists a lot of "watched" species that demonstrate invasive tendencies and have only been controlled by invasive removal methods. He has seen watched species take over forest areas in neighboring towns. Out of an abundance of caution, he believes the town should prohibit any species listed, whether they are watched or invasive. He doesn't see a reason why property owners should be permitted to plant anything on the watched list. There was agreement on this point.

Mr. Behrendt said this is only a partial list of the most common invasive plants. It was decided "Partial List" should be added to the top of the page to avoid confusion; also, a link to the State's complete list should be added.

The Chair questioned why Appendix B references the Missouri Botanical Garden website and Mr. Behrendt said it was recommended by a local landscaper. It was clarified the Missouri website lists recommended plants only.

The Chair will send small editing changes to Mr. Behrendt, who will then bring the final list forward to the Planning Board.

X. Conservation Commission Schedule of Meetings for 2025.

A list of scheduled meetings had been distributed. Since the May meeting would fall on Memorial Day, it was agreed to move it to Tuesday, May 27th.

XI. Review of Minutes: October 28, 2024 and November 25, 2024

Mr. Kelley *MOVED to approve the minutes of October 28, 2024 as submitted; SECONDED by Mr. Cragg; APPROVED unanimously, 6-0, Motion carries.*

Mr. Kelley *MOVED to approve the minutes of November 25, 2024 as submitted; SECONDED by Mr. Lanzer, APPROVED, 5-0-1, with Mr. Cragg abstaining.*

XII. Other Business

Mr. Kelley had submitted two documents to members and at this time, he projected maps on the screen. He explained that in 2001, the Nature Conservancy purchased a conservation easement on a 34-acre lot (shown on the map). The easement protected everything on the far side of the yellow line, including Crommet Creek.

In 2022, a new property owner purchased the lot, which remained subject to the easement. The owner sought Planning Board approval to subdivide the property, creating a 4-acre parcel with an existing house and a larger parcel containing the easement. Both parcels are restricted by a 100-foot buffer associated with a pond, limiting development on the larger parcel to a small quadrant at the back.

Mr. Kelley showed photographs of a large disturbed area within the buffer and commented, “It looks like a bulldozer dropped a blade and cleared the vegetation.” Mr. Behrendt commented there were a lot of invasives in the area but Mr. Kelley said that’s what the owner claimed.

He showed a panoramic photo (taken in November) of clear cutting and Mr. Moyer said he had also seen the area and was shocked. It’s unclear what the invasives were, if any, and which strategies are being used to remove them.

Chair Trueblood said it appears to be a violation of the zoning ordinance and asked if the owner had received Planning Board approval. Mr. Kelley replied the Planning Board was not told the clearing was for invasive species removal. The Chair commented that clear-cutting in this manner isn’t effective if there are a lot seeds.

Mr. Lanzer, a licensed invasive species specialist, said it’s very rare to see a bulldozer used for this purpose; he only recalls seeing it once before.

Mr. Kelley said he believes this is a gross violation of the zoning ordinance and he referenced permitted uses in the WCOD 1-9, which prohibits altering the topography by the addition of fill.

Mr. Behrendt said he met with the owner months ago and thought he had clearly outlined buffer restrictions. During a recent visit, he observed a rock pile, a large apron of stone and a lot of logs – but received no explanation from the owner. He plans to meet with Tim Collins, the owner’s representative, on January 10th, along with Code Enforcement Officer Audrey Cline and Public Works Director Rich Reine. The Town Administrator and Town Attorney will also be consulted. Chair Trueblood asked if he could join the meeting and was told yes.

Mr. Burton asked if the town has the authority to issue a cease and desist and Mr. Behrendt said he's not sure but will discuss options with the attorney. In either case, the area needs to be restored before a certificate of occupancy is issued.

The Chair thanked Mr. Kelley for bringing this issue to the Commission's attention.

XIII. Roundtable

Mr. Burton reported Town Council authorized Option 2 for the refurbishing of Wagon Hill farmhouse, with an estimated cost around \$2M. This was after "spicy" discussion and a wait of 30 years [to make improvements]. There will be room for someone to live in the farmhouse and the barn will be refurbished but not heated. He noted the project has received substantial L-CHIP grant money.

On another topic, Mr. Burton (a state representative) said he's hoping to be appointed to the Conservation Committee in the state legislature so he can keep an eye on trends and concerns.

Reporting on Planning Board activities, Mr. Kelley said there was a condo conversion on Young Drive; minor revisions to the Historic District Ordinance; and a preliminary design review for the old Cumberland Farms. The owner of Irving Station is looking to move Dunkin Donuts across the street; there would be no drive-thru. He added Mill Plaza façade improvements are in the works. Information is available on the town website.

Mr. Burton said the RFP for West Edge has been issued, which he described as a very extensive project with costs about \$100M. He said it could bring 1,000 jobs and include a Center for Excellence. The Council is meeting with the [UNH] President because the town will be involved in infrastructure. He expects there will be conservation issues because it's a large piece of land turning into a high-tech village. RFPs are due in February. There will be a lot of commercial properties, which would result in tax revenues for Durham.

XIV. Adjournment

With no other business, Chair Trueblood adjourned the meeting at 9:36 p.m.

Respectfully submitted,
Lucie Bryar, Minutes Taker
Durham Conservation Commission