

These minutes were approved at the February 24, 2025 meeting.

DURHAM CONSERVATION COMMISSION
Monday, January 27, 2025
DURHAM TOWN HALL, COUNCIL CHAMBERS
7:00 p.m.

MEMBERS PRESENT: Dwight Trueblood (Chair); Erin Hardie Hale (Vice-Chair); Richard Kelley (Planning Board Rep); Nick Lanzer, and Neil Slepian. Alternates: Jacob Cragg, Anne Lightbody and Steve Moyer.

MEMBERS ABSENT: Wayne Burton (Town Council Rep); John Nachilly and Veronique Ludington, Land Stewardship Coordinator.

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 Alternate Steve Moyer was seated as a voting member.

IV. Approval of Agenda

Chair Trueblood MOVED to approve the agenda as submitted, SECONDED by Mr. Lanzer and APPROVED unanimously by a show of hands, 6-0, Motion carries.

V. Public Comments: There were none.

VI. Land Stewardship Update:

Land Stewardship Coordinator Veronique Ludington was not in attendance. As an Alternate on the Land Stewardship Committee, Mr. Slepian read an email from her, giving an update of recent activities:

- Ms. Ludington walked town trails to identify needs, such as updated signs, kiosks and trail maintenance and conservation easement monitoring.
- Met with Rockingham Country Conservation District about invasives at Doe Farm and spoke about it with Trustees of the Trust Fund.
- Met with Sara Callaghan (Previous Land Stewardship Coordinator) several times to ensure continuity with projects and processes.
- Met with Rachel at Parks & Rec to explore opportunities for collaboration.

VII. Updates from the Conservation Commission Education Working Group. Upcoming Discover Durham Trails event and discussion about potential Spring events.

Vice-Chair Erin Hale said they are continuing collaboration with Parks & Rec on Discover Durham Trail Walks. It's been a great partnership, since Parks & Rec handles promotion and registration.

There will be an animal track walk on Sunday, February 16, 2025 at 10:00 a.m. at West Foss Farm and a full moon owl walk on Friday, March 14th at Oyster River Forest from 6:30 to 8:00 p.m. They are still looking for a person to lead the owl walk.

She solicited ideas from the Commission on topics for spring walks. Commission members interested in helping to plan events were invited to attend meetings of the Working Group. They were also invited to help out in any capacity during the walks.

On a different topic, Ms. Hale said John Bromley, an ecologist and science teacher at the high school, approached her about students presenting results of their field work to the Commission. She asked if the Commission would be interested in hearing about their work or possibly attending a community event. Mr. Kelley suggested the library would be a better option since attendance at Conservation meetings is low.

Vice-Chair Hale shared she has a capstone group of UNH students working with the Newmarket Conservation Commission to develop a mapping protocol for vernal pools as well as to create a community guide for a salamander brigade program. The idea is to pilot the program in Newmarket, seek outside funding, and then hopefully expand the project to Durham next year.

VIII. Riverwoods – Phase II. Discussion about Preliminary Design Review application now being presented to the Planning Board for development on the northerly side of Stone Quarry Drive. A variance will be needed for construction within the wetland buffers. The project includes two senior housing buildings, a club house, a maintenance building and associated parking areas, utilities and other site improvements. Riverwoods Durham, c/o Natalie Belanger, property owner. Erik Sari, Altus Engineer, Engineer. Chris Boldt, DTC Lawyers, Attorney. Office Research District. Map 209, Lot 33.

Chair Trueblood said Riverwoods is seeking to expand in the Stone Quarry Drive area and looking for input on design, which is before the Planning Board. Since construction will take place in a wetland area, he believes the application will need review by the Conservation Commission.

Attorney Chris Boldt, of Donahue, Tucker, Ciendella, came forward to represent Riverwoods. He showed a map of the overall project site and said the applicant is planning to expand the senior care facility with two residential buildings on the north side of Stone Quarry, a clubhouse for the entire campus, and a maintenance building at the lower end.

He pointed out two vernal pools in the wetlands and noted all the proposed development is outside the buffer. An easement on the property -- which can be amended -- grants access to two cemetery plots on the northeast side. The applicant is planning to relocate the cemetery trail because it currently passes through a vernal pool.

Attorney Boldt said part of the proposed parking for Building A is within a wetland buffer, but the applicant believes it's runoff from Route 108.

One item discussed with the Planning Board was the potential relocation of a corner of Stone Quarry Drive (and conveying the quadrant of road back to Riverwoods) -- so that trucks coming out of DPW wouldn't have to make a hard stop. It would require Town Council approval. If this were to occur -- Building B, the maintenance garage and its parking -- could be relocated almost entirely out of the wetland.

Attorney Boldt said Building A and its parking, plus the clubhouse still need to be addressed. The applicant is planning to file a request for a zoning variance to reduce the road setback from 50-feet to 30-feet. This would allow them to move two buildings forward. Later he said the variance hasn't yet been filed, pending more information

from the Town Planner. He added even if the road setback variance is granted, a variance for part of Building A would still be needed.

Attorney Boldt said he's here this evening seeking comments and input from the Commission. The applicant will appear before the Planning Board again on February 12th.

The Chair asked Mr. Behrendt if the Conservation Commission would be expected to provide comment or review before or after the Planning Board's next public hearing. Mr. Behrendt said everything shown here requires a variance from the Zoning Board and is not required to come before the Conservation Commission. However, the Commission can comment on any applications – either in front of the Planning Board or the Zoning Board – at any time.

Mr. Slepian questioned why it would be considered a variance and not a Conditional Use Permit if the proposal calls for a parking lot inside a setback. Mr. Behrendt replied that Conditional Use allows certain utilities, accessory structures, driveways and roads in the buffer (by permit) – but the main items here are the building and parking lot, which are not allowed and therefore need a variance. There may be a drainage basin or utilities that would come before the Commission for Conditional Use, but that would be secondary.

Mr. Slepian asked Attorney Boldt what they anticipate as the most troublesome aspect in getting approval from the Planning and Zoning Boards. He replied the design of the stormwater management system has to show all issues are being addressed.

Mr. Kelley invited Attorney Boldt to share a unique aspect of the project raised at the Planning Board. Attorney Boldt said Riverwoods would like to explore having four units set aside for graduate students or associate professors. This correlates to a national movement toward multi-generational housing.

Reinforcing the need to protect wetlands and buffers, Ms. Lightbody asked if Building B could be moved diagonally to the southeast. Attorney Boldt said if a road setback variance is granted, the building would be completely out of the buffer. Although they've looked at many iterations, he'll ask project engineers to explore her suggestion.

The Chair talked briefly about stormwater management and the benefit of rain gardens. He asked if they've considered porous pavement and Attorney Boldt said snow removal

over a porous pavement is challenging. Chair Trueblood advocated for electric vehicle charging stations and Attorney Boldt said they will look into it.

Mr. Kelley asked Attorney Boldt to make a good case for why Building A is proposed for its current location. He questioned where the hardship is to receive a variance. Attorney Boldt said parking can't be in front of the building in this zone; the [engineers] were trying to get necessary parking as far away from the wetland as possible. If the building and parking were to be flipped, nothing would be gained. This area was previously disturbed since it served as a construction yard for the first phase of the project; He believes it's easier to control sheet flow from a building (with gutters, roof drains, etc.) rather than a parking lot.

Mr. Kelley asked about the criteria necessary to receive a variance from the Zoning Board and Attorney Boldt said there are five. Statutorily, the ZBA will look at three things: special conditions of the property; what is the purpose of the actual provision they are seeking the variance from; and is the proposed project or use reasonable?

Attorney Boldt said the special conditions of the property include wetlands, a previously disturbed area and the fact that Stone Quarry Drive is not a through-road. He believes the applicant can receive a variance if they are able to demonstrate the stormwater management systems will accomplish what a buffer can do.

With no further questions from the Commission, Chair Trueblood thanked Attorney Boldt for the 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).

Mr. Slepian continued to lead the Commission's detailed and lengthy discussion on the draft language for the proposed ordinance. Items discussed this evening included 175-61, 175-62, and 175-63.

Review of the draft ordinance will continue next month.

X. Review of Minutes: December 23, 2024

Mr. Moyer MOVED to approve the minutes as submitted; SECONDED by Mr. Kelley; APPROVED, 5-0-1 by a show of hands, with Vice-Chair Hale abstaining because she wasn't present, Motion carries.

XI. Other Business

Chair Trueblood brought up a property discussed at the last meeting that had major disturbances on it and asked Mr. Behrendt to give an update on behalf of the town.

Mr. Behrendt said the property at 361 Durham Point Road (corner of Adams Point Road), has had a lot of work done in preparation for a house, including excavation of rock material with activity in the wetland buffer.

A little more than a week ago, Mr. Behrendt held an on-site meeting with the property owner's representative. Also in attendance were Chair Dwight Trueblood; Rob Sullivan, a representative of the Planning Board; Audrey Kline, Code Enforcement; and Tree Warden Rich Reine.

After walking the site with the group, Mr. Behrendt subsequently sent a letter to the property owner, pointing out seven things observed in the wetland buffer: Stock-piled rock; regrading; gravel driveway next to the pond; substantial rubble in the wetland blocking intermittent stream; significant removal of vegetation; removal of a large pine adjacent to pond; heavy equipment parked in the buffer and placement of additional rubble and stone in the buffer along the drainage-way.

The letter was sent with a response requested by Friday, February 7th, indicating the town would take enforcement action if the deadline isn't met.

Chair Trueblood said the owner's representative claimed the pond isn't natural; it was set up for agricultural purposes when it was a farm and therefore didn't fall within the wetland definition. Mr. Behrendt said if this proves to be the case, the owner would be exempt from the ordinance. The Chair noted it was clearly identified as a wetland when they sought approval from the Planning Board.

Mr. Kelley said the response is odd since the agent or owner told Mr. Behrendt on several occasions that he was aware of the buffer and intended to respect it.

Chair Trueblood said the owner's representative had GIS information showing the property as an agricultural site and claimed they hadn't cut down any large trees. But the

group observed large root systems that would indicate otherwise. He believes the original request was to remove invasive species, which was done in a small section.

Mr. Slepian asked what the penalty would be if the owner is found in violation. Mr. Behrendt said it would be turned over to the town attorney, but fines could be levied and the town could withhold a certificate of occupancy. Chair Trueblood added the owner would have to mitigate the damage done.

Mr. Kelley said he thinks fines would be looked at as the “cost of doing business” and would be readily absorbed. He thinks the loss of habitat is profound. He read a statement from David Price at the Wetlands Bureau, stating: “Manmade ponds are jurisdictional. They may or may not need a permit from DES, depending on the proposed work directly to the pond.”

Mr. Behrendt read from Durham’s ordinance, which applies to the buffer as well: “Wetlands associated with currently functioning and maintained, non-abandoned manmade sedimentation and detention basins and ponds; agricultural and irrigation ponds.”

He said if the property owner can demonstrate it falls into this description, he would be exempt from the ordinance. But even if the owner is correct, he added, that doesn’t give him permission to violate the buffer on that presumption.

XII. Roundtable

The Chair said Great Bay Reserve is convening all area conservation commissioners every couple of months via zoom to talk about common issues. He thinks it’s a great idea and will be attending tomorrow.

Vice-Chair Hale suggested a topic for a future agenda item. She said there’s a lot of talk at UNH right now about the new proposed West End development. Mr. Behrendt said the call for proposals just went out; he can fill in the Commission more at the February meeting.

XIII. Adjournment

With no other business, Ms. Lightbody MOVED to adjourn at 9:30 p.m.; SECONDED by Mr. Lanzer, APPROVED unanimously, Motion carries.

Respectfully submitted,
Lucie Bryar, Minutes Taker
Durham Conservation Commission