

These minutes were approved at the September 19, 2022 meeting.

DURHAM CONSERVATION COMMISSION
Monday, July 25, 2022
DURHAM TOWN HALL, COUNCIL CHAMBERS
7:00 p.m.

MEMBERS PRESENT: Jake Kritzer (Chair), John Nachilly (Vice Chair), James Bubar (Planning Board Rep), Erin Hardie Hale, Carden Welsh (Town Council Rep)

MEMBERS ABSENT: Neil Slepian and Roanne Robbins

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

I. Call to Order & II. Land Acknowledgement Statement

Chair Jake Kritzer called the meeting to order at 7:01 p.m. and read the Land Acknowledgement Statement.

III. Roll Call

Roll Call attendance was taken.

IV. Approval of Agenda

Mr. Bubar MOVED to approve the agenda as submitted; SECONDED by Mr. Welsh, Approved unanimously, 5-0, Motion carries.

V. Public Comments

Joshua Meyrowitz, 7 Chesley Drive: Came forward to give a video presentation he created titled, "The Fate of Church Hill Woods." This pertains to a conditional use proposal for a commercial parking lot to replace Church Hill Woods. He asked about the role of the Oyster River Advisory Committee in protecting the watershed.

Mr. Meyrowitz said the project affects an important buffer area for faculty neighborhood. After the ZBA denied the project because they decided it was not surface parking, the Chair of the Planning Board recommended the PB get clarification on “surface” and “structured” parking, according to Mr. Meyrowitz. Applicants Two Murfs then came back with an even bigger project, which would be 35-feet above grade of Chesley Drive.

Mr. Meyrowitz showed a number of renderings with the scale of the project and noted the applicants have failed to provide realistic renderings. He cited the studies done over 10 years by UNH professor Wil Wollheim on College Brook who commented this project will reverse attempts to improve the water quality and flow of the brook.

He requested the Conservation Commission act in an advisory capacity even though they don’t have a formal role in the project.

Town Planner Michael Behrendt responded the project is outside of the Oyster River Advisory Committee’s purview. Chair Kritzer said the project hasn’t come before the Conservation Commission because it’s not in a wetland buffer.

The Chair asked if Commission members would like to submit comments to the Planning Board, but acknowledged time is tight. The public hearing will be re-convened on August 10th and the Planning Board will likely be in final deliberations after that.

Vice Chair Nachilly said the Commission doesn’t have jurisdiction over this project and there is already impacted terrain between the project and the river. Ms. Hale said perhaps the Commission could look at it from a larger perspective of their Master Plan.

Action Item: The Chair will send an email to the Planning Board to let them know the Commission plans to provide comments regarding the potential environmental impact of the proposed parking lot following their August 22 meeting.

Emily Friedrichs, 18 Garden Lane: Ms. Friedrichs said she’s speaking as a private citizen tonight, not on behalf of the Planning Board. It’s her belief after looking

closely at the application and maps that these properties [proposed for the parking lot] are within the protected watershed of the Oyster River Advisory Committee.

Later, Ms. Friedrichs added further comment re: the Mill Pond contract for removal. She said the State of NH allows permits for dam removal extending 5 to 7 years. She encouraged the Commission to study if there are environmental benefits to slowly lowering the level of the dam.

Addressing the Solar Ordinance currently being reviewed by Town boards, Ms. Friedrichs encouraged the Commission to look carefully at its WCOD and SPOD guidelines to determine if there should be specific conditional use criteria for solar. Specifically, she noted that setbacks (for solar panels) might take precedence over environmental concerns.

Mr. Behrendt said a freestanding solar array in the WCOD or SPOD would require a conditional use permit.

Mr. Bubar commented the proposed solar ordinance prioritizes the preservation of scenic vistas over protection of a wetland. A homeowner would not be able to put a solar array on the roadside, for example, which might push it into a backyard on the water.

Ms. Friedrichs also commented on the Commission's plan to revisit language in the WCOD and SPOD conditional use criteria. She's examined past court cases and said Durham ordinances generally don't require additional studies to be done. She encouraged the Commission to consider this in future changes to the criteria.

VI. Land Stewardship. Tom Brightman, Land Stewardship Coordinator.

- A. Two collaborative projects with UNH Extension.
- B. Eagle Scout proposal for wood duck boxes at Longmarsh Preserve.

Mr. Brightman gave information on two UNH Extension projects:

- A Native Plant Tour is scheduled for August 13th from 9:00 a.m. to 1:30 p.m. It will begin at the Milne Nature Preserve. Currently, 31 people have

signed up; 55 can be accommodated.

- Plans are moving forward to hold an Invasive Species Roundtable with Conservation Commissions from other towns. The proposed date is September 23 from 1:00 to 4:00 p.m. The outdoor session will take place at Thompson Forest and the last hour will be an informal roundtable in Council Chambers.

B. Eagle Scout proposal – Mr. Brightman said the Eagle Scout couldn't be here this evening. Her proposal is to construct five wood duck boxes at Longmarsh Preserve. He suggested they be located on adjacent land, not in the marsh – since this makes them easier to maintain. The Scouts have agreed to do annual maintenance on the wood boxes, which can be time-consuming.

Mr. Welsh MOVED to approve the Eagle Scout wood duck box project; SECONDED by Mr. Bubar, APPROVED unanimously, 5-0, Motion carries.

VII. 26 Cedar Point Road – Dock Extension. Request for comments to New Hampshire Division of Environmental Services regarding application for permit to extend dock into Little Bay. Michael Cleary, property owner. Steve Riker, Ambit Engineering, agent. Map 120, Lot 32.

Engineer Steve Riker spoke on behalf of Michael Cleary Revocable Trust. This parcel has an existing tidal dock built in 2017. At that time, NH DES limited dock length to 200-feet. The applicant is now asking for an extension of 35 feet, in light of newer DES regulations allowing dock length to be “200-feet or water depth needed to access the water.” Currently the owner has limited access at low tide.

Mr. Riker shared a number of site plans and the DES permit plan. The current DES ordinance requires owners to construct docks to accommodate sea level rise projected for 2100.

Harbor master approval has been granted. Other agencies that have reviewed and signed off include the Division of Historical Resources and NHB. Final review from NH Fish & Game is pending. They will review the construction period vs. its impact on sturgeon.

The Commission is invited to submit any relevant comments to NH-DES.

There were questions and brief discussion about floats on the bottom creating sediment stir and also about projected sea level rise. Mr. Riker said the numbers being used are from the UNH document on Coastal Vulnerability.

The Commission did not have comments to submit to NH-DES.

VIII. 32 Cedar Point Road – Dock Extension. Request for comments to New Hampshire Division of Environmental Services regarding application for permit to extend dock into Little Bay. Manish Heiderscheidt Trust, property owner. Steve Riker, Ambit Engineering, agent. Map 120, Lot 29.

Mr. Riker said this is a similar project to the previous one. The owner is requesting a 70-foot pier extension. The purpose is to provide the water depth needed for his large boat.

NH-DES limits the size of a dock and float to 2,000 square feet total. He shared site plans with the Commission and said all relevant agencies have reviewed and signed off on the project.

There were questions and discussion about materials for the floats and piles, as well as removal of the gangway and floats during the winter.

The Commission did not have comments to submit to NH-DES.

IX. 74 Mill Road – Shoreland District. Conditional use for garage and accessory dwelling unit to be located within the Shoreland Protection Overlay District (SPOD). Iago and Erin Hale, property owners. Alex Ross, engineer. Map 109, Lot 85.

Ms. Hale recused herself from this application. Iago Hale came forward to discuss the project. He said they have a barn/carriage style house used for storage. The structure is failing and they would like to replace it with an accessory unit for his mother. They presented to the Planning Board but then learned they needed NH-DES approval because it's considered a primary structure.

Since the State prohibited the Hales from re-building on the current footprint, they have decided to site it outside of the 50-foot buffer and place it in their driveway. They have been to the ZBA. This is an accessory structure within the SPOD and therefore must meet the four criteria.

Mr. Hale said their property has significant erosion due to stormwater coming from Mill Road across their driveway. They will consider adding vegetation in the final plan. The size of their driveway will be reduced, decreasing the amount of hard surface.

The Hales met with April Talon two years ago and the Town only partially addressed the water issues caused by runoff from Mill Road. The Hales are proposing to move the building further away from the river, upgrade the septic system, reduce its footprint and provide some stormwater management.

The Commission then reviewed all four criteria for conditional use in an SPOD/along with responses from the applicant.

Mr. Welsh and Mr. Nachilly commented the Commission should encourage the Town to fully address stormwater runoff issues affecting the property.

Mr. Nachilly MOVED that the Commission finds the four criteria for conditional use within the SPOD have been met and that two comments (below) should be incorporated into their review; SECONDED by Mr. Welsh, APPROVED unanimously, 4-0, Motion carries. Ms. Hale had recused herself from the discussion and voting.

Comment to be appended: *The Commission suggests the applicant look at further mitigation efforts after removal of the current building and that the Town take a hard look at the serious erosion problem coming off Mill Road.*

The Chair noted that Mr. Bubar left the meeting at 8:45 p.m.

X. Mill Pond Dam. Discussion about Section 106 process for providing input into mitigation measures for removal of the dam.

Mr. Behrendt recapped that the Town has voted to remove the dam, which will take a couple of years. The project requires a permit from the Army Corps of Engineers – which necessitates a Section 106 review of historical resources.

The dam itself is a historical resource, therefore the Town is required to mitigate the historical impact to the extent practical. Some ideas being considered are

maintaining one or both abutments and/or adding signage. Any organization, board or commission with standing can formally request to be part of the Section 106 review process.

Chair Kritzer said the Commission should apply to be a party with standing so they can weigh in on the environmental aspects of the mitigation efforts. Mr. Welsh asked if Native Americans in the area will be a consulting party and Mr. Behrendt said he believes so.

There was discussion and disagreement among members about requesting formal consultant status and what the time commitment might be. Mr. Welsh said he trusts the parties involved to do the work.

Mr. Nachilly said he does not see the need to apply to be a consulting party since the Commission will be called on in its usual capacity when activity takes place in the wetlands.

Ms. Hale said she would be in favor of applying to be a party of standing so the Commission could weigh in on environment issues if they arise. It might be helpful for the Commission to take part in “how the story is told.”

Mr. Welsh expressed that the Durham Historic District Commission might see this as an encroachment since the Section 106 Review is about historical resources.

Mr. Kritzer MOVED that the Conservation Commission request to the Army Corps of Engineers to be added as a consulting party for the Section 106 review as it pertains to the removal of Mill Pond Dam; SECONDED by Ms. Hale, Motion Approved, 2-0-2, with Mr. Nachilly and Mr. Welsh abstaining, Motion carries.

XI. Review of Minutes: April 25, 2022 and May 23, 2022 - TABLED

XII. Other Business

Proposed Changes to Conditional Use Language within WCOD and SPOD

Chair Kritzer said the Commission previously discussed proposing changes to the language for conditional use within the WCOD/SPOD. The Commission has

wrestled particularly with criterion #1, most recently when reviewing the Gerrish Drive subdivision.

The Gerrish application was appealed through the courts and is now expected to come back to the Commission for another review. He questions if this is the right time to change the criteria or if the Commission should wait until after the Gerrish Drive application is settled.

Mr. Behrendt added the soil report for the property was not verified by the Conservation Commission and that was the basis of the litigation. In his view it would be confusing to adopt changes to the criteria while the Gerrish application is pending.

If changes are made now, he explained the Gerrish Drive applicant would then have the choice to use the old WCOD criteria or new WCOD criteria. Discussing changes while there's a challenging application before them could cause questions about changing the rules midstream.

Chair Kritzer said there will always be active applications and probably no best time to discuss changes to the criteria.

Vice Chair Nachilly commented in his view the criterion as written allows for qualitative decisions to be made. He doesn't see the need to amend the criteria.

Chair Kritzer said he does not believe members felt they could make a qualitative decision on Gerrish Drive since they interpreted the language strictly. He would like the criteria to give the Commission the latitude to talk about the merits of different options.

There was further discussion about the how long the process would take to complete, i.e., to amend the criteria and the timeline for the review of the Gerrish Drive application. Mr. Behrendt said any proposed changes would go before the Planning Board and ultimately to Town Council for approval.

After lengthy discussion, the Commission decided to begin deliberating over changing the criteria at its next meeting, but agreed not to pursue it formally with the Planning Board until they've finished with the Gerrish subdivision application.

It's believed the Gerrish application will be remanded to them in the next month or two.

Need for Alternates

Mr. Behrendt said the Commission has seven regular members, but is looking for two or three alternates. There was discussion about ways to recruit alternates and if certain parameters should be set.

The Chair said he would like to see more women on the Commission, but Mr. Welsh countered that based on state law...gender, religion and race cannot be factors. He sees no reason to pursue one gender over another.

Chair Kritzer maintained his position that it's appropriate to encourage women to apply. The Commission has a hand in shaping representation. It was agreed to post the alternate openings in Friday Updates.

XIII. Roundtable. Updates from Conservation Commission members.

Mr. Welsh gave updates on Town Council activities:

- 1.) Chair Kritzer gave a report to the Council about achievements over the past year. He noted the Commission is well-represented by Jake.
- 2.) The Council looked at an interesting ground water modeling study. One key point: it's not just what happens to water above ground, but below ground as well. Mr. Welsh said while the town appears to be in good shape, eventually wells could be impacted. The Council is working with Strafford Regional Planning and UNH on this. He recommends watching the presentation on D-CAT [two meetings ago].
- 3.) The Town is on budget for this year. A lot of grant funding is coming in, including for dam removal.

Mr. Nachilly reported more on the Land Stewardship Committee. He said the committee is working with a number of Eagle Scouts on projects. Growth in Thompson Forest will need to be addressed in the next year, otherwise a brontosaurus won't be sufficient to remove vegetation.

Re: trails, Mr. Nachilly said they are working with UNH's Steven Eisensure on re-routing the White Trail. Also, DPW created a bridge off Bennett Road into the LaRoche property. A study on plants at the Beaudette property will be done in August.

XIV. Adjournment.

Mr. Welsh MOVED to adjourn at 9:39 p.m.; SECONDED by Mr. Nachilly, APPROVED unanimously, 4-0, 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.