

DRAFT

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

1 **I. Call to Order**

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

3
4 **II. Land Acknowledgement Statement**

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

6
7 **III. Roll Call and Seating of Alternates**

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

10
11 **IV. Approval of Agenda**

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

14
15 **V. Public Comments:** None this evening.

16
17 **VI. Land Stewardship Update:** Request for approval of appointment of Sara Callaghan
18 as an alternate on the Land Stewardship Committee.

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

21

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

23

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

27

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

33

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

37

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

42

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

45

46 ■ Salamander Crossing Brigade: they introduced this in Newmarket last year,
47 inspired by the Harris Center in southwestern NH. Trained volunteers go out each
48 spring to assist salamanders and frogs crossing roads to get to breeding grounds.
49 The town of Durham is invited to partner with Newmarket on this, if they wish.

50

51 ■ Newmarket is wrapping up their update to Prime Wetlands mapping, first done in
52 2009. Wetlands Scientist Mark West updated the mapping and the town is now
53 looking to hire him to map vernal pools. She suggested Durham could collaborate
54 in the effort, since the two towns share wetlands. Newmarket is looking into
55 pursuing grant funding from the Piscataqua River Estuaries Partnership (PREP).

56

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

61

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

64

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

70

71 If they pursued this project jointly, each town would have individual costs billed,
72 determined by the consultant. When asked to estimate cost, Ms. Snyder guessed about
73 \$10K.

74

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

77

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

80

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

83

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

88

89

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

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

97
98 They've done due diligence and coordinated with the Natural Heritage Bureau, NH Fish
99 & Game, the Harbormaster, and U.S. Fish and Wildlife Service. There are 337 square feet
100 of temporary impacts and 980 square feet of permanent impacts. They will implement
101 "avoidance techniques" to protect Great Bay.

102
103 One pile, to be installed using a low-impact vibratory hammer, is for research
104 instrumentation rather than structural support.

105
106 Mr. Taylor said along with along with marine contractors, they've developed a turbidity
107 sleeve to address turbid water that is kicked up from installing piles. The Chair asked
108 where the turbid water ends up and Mr. Taylor replied he's not exactly sure, but it's
109 collected on a barge.

110
111 Mr. Kelley asked about the timeline for the project and Mr. Taylor replied it's dependent
112 on approval from the state (which has 60 days to respond), but hopefully next spring.
113 T. F. Moran is doing the permitting; the work will be done by Riverside and Pickering
114 Marine contractors. It was confirmed all work will be done from a barge.

115
116 The Chair thanked Mr. Taylor for his presentation.

117
118 **VIII.4 Riverview Court – Conditional Use Application.** Conditional use in the Shoreland
119 Protection Overlay District for an existing single-family house for structures to be
120 located within the 125-foot setback line: expansion of existing driveway, retaining wall,
121 shed and buried electric line that currently runs overhead. Arthur McManus, property
122 owner. Chris Guida, Fieldstone Land Consultants, wetland and soil scientist. Map 214,
123 Lot 11. Residence Coastal District.

124
125 The Chair said the Commission did an informative site walk last Saturday, but there
126 weren't enough members present for a quorum.

127
128 Arthur McManus, property owner, came forward. He said they're hoping to expand the
129 driveway. A garage is being rotated 90-degrees, taking advantage of an existing utility
130 pathway. He acknowledged suggestions made during the site walk for a swale and rain
131 garden are a good way to protect from runoff.

132 The shed was originally proposed closer to the water but based on suggestions, he's
133 willing to push it closer to the road. With the new garage, they're able to move the 12 x
134 16 shed closer to the road without having it forward from the house.

135
136 Re: the retaining wall: Mr. McManus said there's a steep incline from a patio-covered
137 porch to level ground. The wall would be no more than 2-to-3-feet and have a set of
138 stairs. After getting a suggestion during the site walk regarding native plants, he's
139 consulted the state website for planting ideas.

140
141 Mr. Slepian asked if the retaining wall is 25-feet from the Oyster River (as it appears on
142 the plans) and if it's a new structure. Mr. McManus confirmed it's 25-feet and said it's
143 new but will be integrated into an existing structure – the covered porch south retaining
144 wall.

145
146 There was brief discussion about plants on top of the retaining wall and plantings
147 between the wall and the river. The homeowner said he plans to use ground cover on
148 top of the retaining wall so as not to obstruct water views. The area down to the river
149 will be woodchips and then native plants as you get closer to the river.

150
151 It was confirmed that Mr. McManus has changed his original plan showing a one-cut
152 driveway and, after discussing it with his contractor, is now proposing a circular
153 driveway.

154
155 Ms. Lightbody asked for a point of order. She said since the garage hasn't yet been
156 approved, it seems odd to be discussing the driveway. She's not sure if this question
157 should be directed to the Town Planner. How should the Commission be thinking about
158 their decision this evening?

159
160 Town Planner Michael Behrendt said he hasn't yet had a chance to look over the
161 numbers but he thinks the Code Enforcement Officer has done that. Assuming it meets
162 town requirements, the driveway would fit into plans for the garage.

163
164 Ms. Lightbody asked if they should proceed for now with the assumption that the
165 garage will be approved and Mr. Behrendt said yes. She noted both plans show a large
166 driveway, with all runoff draining into the Oyster River. She'd like to know the specifics
167 for the plantings and run-off. She thinks the homeowner is headed in the right direction,
168 but not quite there yet with specifics. She asked if he'll be talking to a landscaper.

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

172
173 Mr. Kelley said normally the Commission would see a much more detailed engineering
174 plan at this stage.

175
176 Mr. Behrendt noted there a number of details that would be helpful to have, including
177 design and location of the rain garden and swale and more information about plantings.
178 Mr. Kelley added information about "temporary erosion control" as well. Mr. McManus
179 said all notes will be transferred to a new engineering drawing before it goes to the
180 Planning Board

181
182 Throughout the lengthy discussion, Mr. Kelley advised the homeowner about what the
183 Planning Board will be looking for when reviewing his application, including:

- 184
- 185 ▪ More information about temporary sediment and erosion control and a clear
186 definition of where excavation materials will be placed during construction.
 - 187 ▪ Specifically how temporary impacts to the river will be mitigated during
188 construction. (Mr. McManus replied there's already a silt fence and there will be
189 a fabric mat installed.)
 - 190 ▪ Why there's a need for so much impervious surface (from the proposed circular
191 driveway) in the buffer.
 - 192 ▪ The homeowner needs to make his strongest case for his plans on the
193 Conditional Use Permit application.

194
195 The Chair advised the homeowner to hire a competent contractor to design and install
196 the rain garden. It has to be scaled correctly with a gravel area to hold water until it
197 absorbs into the soil or is taken up by plants.

198
199 Mr. McManus asked if the entire 40-foot area between the house and the driveway
200 should be rain garden and Mr. Trueblood responded he's not an expert; that's why the
201 homeowner is being advised to hire a professional. He added the choice of plants is
202 important because there's a six-foot slope that is fairly exposed. He mentioned sea level
203 rise and said if there's a big storm, winds could erode the area.

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

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

208

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

213

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

218

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

223

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

227

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

231

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

235

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

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

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

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

246
247 Mr. Nachilly said Mr. McManus also needs to address the pitch of the roof and where
248 the water from the cul de sac will go. Is there going to be mitigation along the edge of
249 the driveway or is it going to run right in.

250
251 Mr. Behrendt said a good landscape architect would be able to lay it all out and he can
252 assist Mr. McManus in finding one.

253
254 There was discussion about next steps in the process, i.e., proceeding with the
255 scheduled public hearing at the Planning Board on December 13th or coming back to
256 the Conservation Commission first. Mr. McManus was advised to come back to the
257 Commission in November and then continue with the Planning Board's public hearing in
258 December.

259
260 Mr. Behrendt asked the Commission if they could provide more guidance to Mr.
261 McManus this evening, particularly regarding the circular driveway vs. one with a single
262 access point.

263
264 The Chair said he thinks a circular driveway makes more sense because he noted during
265 the site walk that a single entrance driveway would likely require two pads. A circular
266 drive with a rain garden and swale would mitigate runoff and make it easier to exit the
267 property.

268
269 Ms. Lightbody agreed, but added the circular driveway looks large; if there's any way to
270 reduce that, it would be helpful. Due to the home's proximity to the water, she asked if
271 anything could be done to the existing house roof to mitigate runoff.

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

275
276 Mr. Behrendt confirmed the Commission's jurisdiction stops at the setback line, but said
277 they have a say on whether a [circular driveway] is the optimal solution. Mr. Kelley

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

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

282

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

284

285

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

290

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

295

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

301

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

307

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

310

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

316 Mr. Slepian asked Mr. Lanzer for clarification on Items 3 & 4: Is he saying those items
317 under “native and natural vegetation” don’t count as forestry? Mr. Lanzer said the area
318 needs to be large enough to consider *all* aspects of forestry, which he enumerated.
319

320 Mr. Trueblood said the Sub-Committee included 3 & 4 under 174.61 to prevent people
321 from razing all the vegetation in the buffer so they could have a view of the Bay or the
322 river. The intent was to give homeowners a little flexibility, but at the same time prevent
323 them from doing something that doesn’t take into account the ecological benefit of
324 existing vegetation. He commented “forestry is a very different large-scale operation”
325 and Mr. Lanzer agreed. Later he added that most foresters don’t work on areas under
326 10 acres.
327

328 Mr. Trueblood noted section D addresses forestry activity within the WSOD with a
329 simple statement saying: “Any forestry activity within the WSOD shall be conducted in
330 accordance with the Basal Area Law RSA 227-J:9 and shall follow best forest
331 management practices.” He’s unclear if the intent is to leave items 3 & 4 alone or delete
332 3 & 4.
333

334 After lengthy discussion, the Commission ultimately decided to amend the draft as
335 follows: Move D on page 8 (regarding forestry) to section A (native and naturalized
336 vegetation), adding Forestry as a separate letter. Subsequent sections will be re-lettered
337

338 Topics brought up during discussion included: limiting activities based on parcel size; the
339 Commission’s purview if a homeowner has a timber management plan by a licensed
340 forester; how to address the possibility that homeowners could remove 50 percent of
341 trees each year in order to achieve a clear view over time.
342

343 Mr. Lanzer also said homeowners with contiguous parcels sometimes “practice forestry”
344 together. The Commission discussed how buffers provided within the Basel Forestry Law
345 should impact local ordinances and questioned if the town could legally be stricter than
346 state law.
347

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

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

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

356 **XI. Review of Minutes:** September 23, 2024

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

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

364 **XII. Other Business**

365

366 **XIII. Roundtable**

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

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

373

374 **XIV. Adjournment**

375

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

378

379 Respectfully submitted,

380 Lucie Bryar, Minutes Taker

381 Durham Conservation Commission