

DRAFT

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

1 **I. Call to Order**

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

10
11 **IV. Approval of Agenda**

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

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

17
18 **VI. Land Stewardship Update:**

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

23

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

30

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

34

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

39

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

43

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

47

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

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

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

60

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

65

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

68

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

72

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

79

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

83

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

91

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

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

97

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

102

103

104 **VIII. Wetland and Shoreland Overlay District – Zoning Amendment.** Continued
105 discussion about proposed new Wetland and Shoreland Overlay District (WSOD) to
106 replace the current Wetland Conservation Overlay District (WCOD) and Shoreland
107 Protection Overlay District (SPOD).

108

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

112

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

116

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

120

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

125

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

129

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

132 There was brief discussion about the removal of trees within 50 feet of the house and
133 25 feet of the reference line. Mr. Slepian asked if there could be a conflict between the
134 two. It was clarified the reference line is the edge of the wetlands and that would take
135 precedence if there was a conflict.

136
137 There was discussion regarding activities homeowners are permitted to do (Permitted
138 Use B) without coming before the Commission, including alteration of plantings in a
139 wetland (pg. 9). Mr. Lanzer pointed out that two or more property owners can share a
140 wetland and alteration of vegetation in a wetland by one owner can affect wildlife on an
141 adjacent property. Members discussed when or if it's advisable to add plantings in a
142 wetland or buffer.

143
144 There was lengthy discussion about lawns, i.e., what constitutes a lawn, what's the
145 distinction between "lawn, sod, and turf," etc. Mr. Cragg shared a reference from an
146 Easton, MA ordinance. Mr. Behrendt will revise the wording based on tonight's
147 discussion and it will come before the Commission for review again.

148
149 The Commission reviewed the 14 items permitted without approval under Permitted
150 Use B and Mr. Behrendt questioned if some items under Conditional Use should be
151 moved to Permitted Use.

152
153 Specifically, he asked if the installation of utility poles should be moved from Conditional
154 Use to Permitted Use B. Currently, utility companies need to come before the
155 Commission for review if the activity will take place in a buffer. Mr. Slepian said he feels
156 it's appropriate that utility companies meet the four criteria and there seemed to be
157 consensus on this.

158
159 There was also discussion about temporary crossings for the maintenance or installation
160 of utility pipes or lines; temporary coffer dams; and the expansion of non-conforming
161 structures. On the latter item, Chair Trueblood pointed out the application reviewed
162 tonight for 4 Riverview Court falls into this category. Expansion is allowed under Section
163 175-30-D.

164
165 Mr. Kelley read this section of the ordinance. As written, expansions of non-conforming
166 structures would require Commission review and Planning Board approval.

167
168 In light of the late hour, the Chair recommended that they postpone further discussion
169 on the amendment to the next meeting and move on to other agenda items.

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

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

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

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

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

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

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

192 **X. Conservation Commission Schedule of Meetings for 2025.**

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

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

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

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

200 **XII. Other Business**

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

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

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

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

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

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

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

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

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

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

237 **XIII. Roundtable**

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

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

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

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

257 **XIV. Adjournment**

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

259

260 Respectfully submitted,
261 Lucie Bryar, Minutes Taker
262 Durham Conservation Commission