

DRAFT

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

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 Alternate Steve Moyer was seated as a voting
9 member.
10

11 **IV. Approval of Agenda**

12 *Chair Trueblood MOVED to approve the agenda as submitted, SECONDED by Mr.*
13 *Lanzer and APPROVED unanimously by a show of hands, 6-0, Motion carries.*
14

15 **V. Public Comments:** There were none.

16 **VI. Land Stewardship Update:**

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

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

27

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

30

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

34

35 There will be an animal track walk on Sunday, February 16, 2025 at 10:00 a.m. at West
36 Foss Farm and a full moon owl walk on Friday, March 14th at Oyster River Forest from
37 6:30 to 8:00 p.m. They are still looking for a person to lead the owl walk.

38

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

42

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

48

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

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

61

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

66

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

72

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

78

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

81

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

87

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

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

94

95 Attorney Boldt said he's here this evening seeking comments and input from the
96 Commission. The applicant will appear before the Planning Board again on February
97 12th.

98

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

105

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

113

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

117

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

122

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

127

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

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

132
133 Mr. Kelley asked Attorney Boldt to make a good case for why Building A is proposed for
134 its current location. He questioned where the hardship is to receive a variance. Attorney
135 Boldt said parking can't be in front of the building in this zone; the [engineers] were
136 trying to get necessary parking as far away from the wetland as possible. If the building
137 and parking were to be flipped, nothing would be gained. This area was previously
138 disturbed since it served as a construction yard for the first phase of the project; He
139 believes it's easier to control sheet flow from a building (with gutters, roof drains, etc.)
140 rather than a parking lot.

141
142 Mr. Kelley asked about the criteria necessary to receive a variance from the Zoning
143 Board and Attorney Boldt said there are five. Statutorily, the ZBA will look at three
144 things: special conditions of the property; what is the purpose of the actual provision
145 they are seeking the variance from; and is the proposed project or use reasonable?

146
147 Attorney Boldt said the special conditions of the property include wetlands, a previously
148 disturbed area and the fact that Stone Quarry Drive is not a through-road. He believes
149 the applicant can receive a variance if they are able to demonstrate the stormwater
150 management systems will accomplish what a buffer can do.

151
152 With no further questions from the Commission, Chair Trueblood thanked Attorney
153 Boldt for the information.

154

155 **IX. Wetland and Shoreland Overlay District – Zoning Amendment. Continued discussion**
156 **about proposed new Wetland and Shoreland Overlay District (WSOD) to replace the**
157 **current Wetland Conservation Overlay District (WCOD) and Shoreland Protection**
158 **Overlay District (SPOD).**

159 Mr. Slepian continued to lead the Commission's detailed and lengthy discussion on the
160 draft language for the proposed ordinance. Items discussed this evening included 175-61,
161 175-62, and 175-63.

162 Review of the draft ordinance will continue next month.

163 **X. Review of Minutes:** December 23, 2024

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

167 **XI. Other Business**

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

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

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

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

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

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

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

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

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

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

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

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

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

212 **XII. Roundtable**

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

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

220 **XIII. Adjournment**

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

223 Respectfully submitted,

224 Lucie Bryar, Minutes Taker

225 Durham Conservation Commission