



TOWN OF DURHAM
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Town Planner's Project Review
Wednesday, July 13, 2016

- IX. **30 Newmarket Road – Construction within WCOD.** Review of proposed construction within the 75 foot buffer of the Wetland Conservation Overlay District - conditional use for driveway and electric utilities and permitted use for well. Richard and Susan Renner, property owners. Adam Fogg, Atlantic Survey, surveyor. Residence B District. Map 6, Lot 9-6-1.
- I recommend that the board discuss the project and schedule a site walk. The public hearing is scheduled for July 27.

Please note the following:

- 1) Two elements. Two separate items are before the Planning Board for approval – the driveway and utilities which are allowed by conditional use subject to certain criteria and the well which is a permitted use provided certain criteria are met (different from those for the conditional use).
- 2) Map. A from the applicant is included in the packet. I also included a map on which I highlighted the salient features.
- 3) Well – permitted use. As shown on the plans, the proposed well would be located within the 75 foot wetland buffer strip (within the Wetland Conservation Overlay District). A well is permitted here per Section 175-60. B. 1. provided that the: *Planning Board, with the advice of the Conservation Commission, determines that:*
 - a) *appropriate erosion control measures will be used,*
 - b) *any disturbed area will be restored, and*
 - c) *the activity will be conducted in a manner that minimizes any impact on the wetland.*
- 4) Well – DCC comments. The Conservation Commission reviewed the proposal for the well on June 9, 2016 and endorsed the plans as follows:

At our Conservation Commission meeting on 9 June 2016, Rick Renner presented a proposed plan to build a single home on the lot he owns on Newmarket Road. The plan showed a single house on the lower half of the property with a well in the

lower area (inside the 75 foot wetland setback). The proposed leach field was located on the upper half of the lot.

The Conservation Commission discussed the plan (attached) and noted the following:

1. The proposed well location was with the 75 foot setback. This was noted as a permitted use inside the setback. The Commission agreed that the well location was appropriate and we recommend that it be allowed by the town.
2. The Commission recommended that the approved plans include standard notes from the site engineer to control erosion and spoils from the drilling and construction so as not to impact the Mill Pond and Oyster River.
3. The Commission also noted that the plan to include a single home on the the lot in the lower area, outside the wetland setbacks as shown on the plan, was a lower impact use on the property than an earlier two home plan we viewed. The lower lot location would preserve the views on Rt 108 gateway into town by situating the house behind the knoll on the upper property.
4. The Commission noted that the owner's intention to get approval for a single home would be more desirable than a two house plan which might be possible on this property. The Commission thought a single house plan with some possible minor impact on wetland was a reasonable approach with a limited impact on adjacent waterways.

Overall, the Commission agreed with the plan that was presented and thinks a single house on the lower part of the lot with a well located within the wetland setback is the best approach for this circumstance.

Sincerely,
Robert Sullivan
Chair, Durham Conservation Commission

- 5) Driveway and utilities. A conditional use is required for that portion of the driveway and electric lines that will be located within the 75 foot wetland buffer. This section lies directly in front of the proposed house for a distance of about 140 feet. The section in the front half of the lot closer to the existing driveway is situated outside of the 75 foot buffer and is not subject to review. *However*, a small section of the driveway closest to Newmarket Road does lie within the wetland buffer. If any expansion of the driveway or installation of new utilities on the ground were involved here that would also be part of the conditional use.
- 6) Driveway and utilities – DCC. The applicant will meet with the Conservation Commission on July 14 to discuss the conditional use. The applicant discussed the driveway and utilities with the Conservation Commission on June 9 but the

commission did not review it at that time with an eye toward the wetland buffer criteria.

Rob Sullivan, Commission Chair, did not, however: *The Conservation Commission discussed that a building located on the lower portion of the land could be more desirable than a location on the upper portion of the land. The discussion was that a lower location would help preserve the attractive views of the field on Rt 108.*

- 7) Driveway – front portion. Regarding the existing driveway I will confirm that the Fire Department would not require that it be improved since it will now serve 2 lots and that NHDOT would not require any additional permit for the driveway.
- 8) Utility lines – underground. The applicant says that the new electric lines will be buried. I think that this should be required as part of the conditional use (We trust that the applicant would bury the lines on his own but there is no specific Town requirement for this in the Zoning Ordinance so adding this condition will ensure that they are buried, especially since the lot will be sold to a third party. The Subdivision Regulations require underground utilities but that provision would not apply to an old existing lot.)
- 9) Conditional Use. A conditional use involves a public hearing and abutters within 300 feet are notified. The applicant must post a sign about the public hearing. Approval of a conditional use requires the affirmative vote of 5 Planning Board members.
- 10) WCOD Conditional Use Criteria. The 4 criteria below must be met for the conditional use, in addition to the 8 general conditional use criteria. The applicant has not yet provided information about these 4 criteria but says that he will provide it shortly. Section 175-61. B. states:

The Planning Board shall approve a Conditional Use Permit for a use in the WCO District only if it finds, with the advice of the Conservation Commission, that all of the following standards have been met in addition to the general standards for conditional uses and any performance standards for the particular use:

- 1. There is no alternative location on the parcel that is outside of the WCO District that is feasible for the proposed use;*
- 2. The amount of soil disturbance will be the minimum necessary for the construction and operation of the facilities as determined by the Planning Board;*
- 3. The location, design, construction, and maintenance of the facilities will minimize any detrimental impact on the wetland, and mitigation activities will be undertaken to counterbalance any adverse impacts; and*
- 4. Restoration activities will leave the site, as nearly as possible, in its existing*

condition and grade at the time of application for the Conditional Use Permit.

- 11) WCOD Conditional Use Criteria – response. The applicant states in his email to me of July 8: *In addressing the above regulations and concerns of the ZBA and Planning Board, we will have a formal letter from a certified engineer to attest to the fact that the ideas and concerns espoused in numbers 2-4 above will be addressed. We hope that your Board will agree that: (1.) The placement of underground utilities will have minimal disturbance with no lasting impact and that (2.) The momentary disturbance of trucks to help compact a driveway, will leave no lasting impact on the soils, wetlands, adjacent bodies of water (i.e. Mill Pond) and that the field will return to its natural habitat after the building is completed. It is only logical, that anyone buying such a gorgeous and private setting would want it back to its bucolic nature as soon as possible.*

In regards to number one above ... [o]ur primary arguments in favor of the specific placement are as follows:

- a. While there are other suitable sites, the Town officials, Council members and local conservationists have asked us to spare the front portion of the buildable space to enhance and preserve the southern entrance to Durham. The lands adjacent to the front of our property in question (to the South) are held in conservation by the “SELT”(Southeast Land Trust). Therefore, we feel that the home’s placement in the mid portion of the property will satisfy the Town’s interests.*
- b. The proposed home site affords future property owners the ability to view the historic Mill Pond and Church steeple. Minimal impact to the environment will be preserved, and this site will be a unique spot, in perpetuity.*
- c. Future owners will be situated away from the noise of route 108 and the “dog barking noise” which emanates from the Kennel/Dog day care across the road. There has been a well-documented history of complaints and a full year of Planning Board meetings to adjudicate the failings of the previous owner. I would ask that the Board contact Mr. Behrendt for a summary of that issue.*

Finally, we hope that the Conservation Commission appreciates our due diligence in following the prescribed ordinances, rules and recommendations. We asked for and sought your advice previously, and ask again that you grant your approval to the ZBA and Planning Boards on this project as described.

- 12) General Conditional Use Criteria. For the review of the conditional use, the Planning Board will also need to consider the 8 general criteria laid out in Article

VII. Conditional Use Permits. The applicant speaks to these criteria in his application.

- 13) Septic system. The ZBA has purview to grant a special exception for those portions of the septic system that are within 125 feet of the wetlands, per Sections 175-29.B. and 175-62. This includes the septic tanks near the proposed house and the entirety of the septic line up to where it passes the 125 foot mark (i.e. everything that is part of the system located to the west of the 125 foot mark). This is a separate matter from the Planning Board's review.

- 14) Historic District. The Durham Historic District extends 250 feet from the centerline of Newmarket Road. The right of way of Newmarket Road (as best can be determined by Public Works) is 66 feet so the Historic District line is situated 217 feet from the front lot line. Note that the line is actually located slightly to the west of where the applicant has drawn it on the plans. The Historic District Commission has purview over driveways (and stonewalls, removal of large trees, and other elements) so it appears that the HDC will need to review a short section of new driveway to be constructed from the end of the existing paved driveway to reach a new house on the subject lot. This review would be required prior to issuance of a building permit on the lot, so the applicant could submit an application at that time.