

TOWN OF DURHAM
8 NEWMARKET RD
DURHAM, NH 03824-2898
603/868-8064
www.ci.durham.nh.us

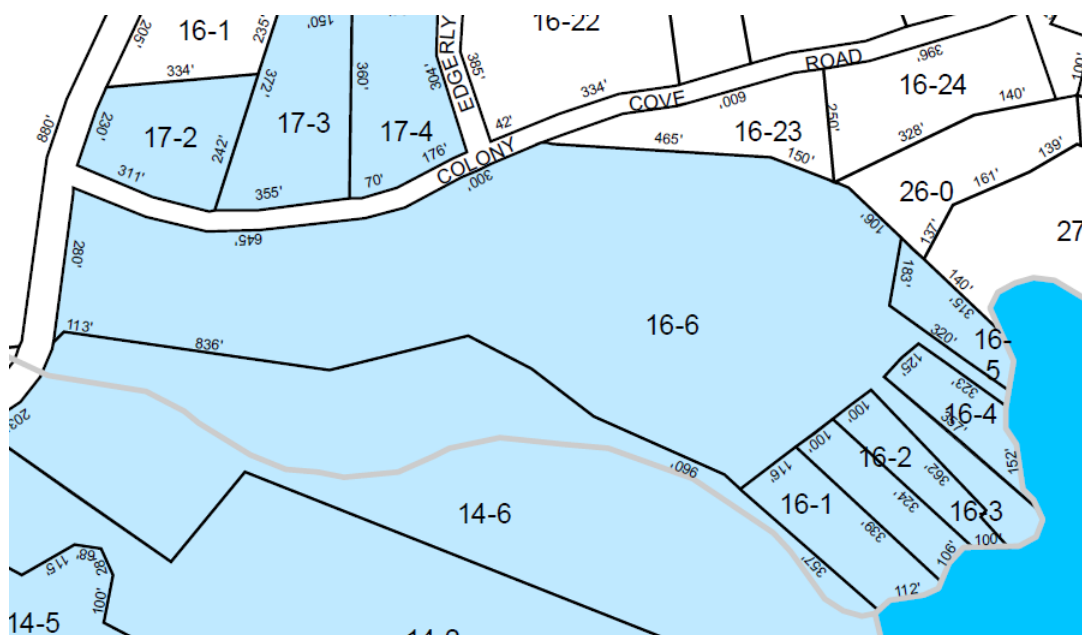
Town Planner's Project Review
Wednesday, July 13, 2016

- X. **269 Durham Point Road – Construction within SPOD.** Review of proposed construction within the Shoreland Protection Overlay District – driveway, walkways, and utilities within 250 feet of the reference line of Little Bay. Robert and Brenda Ryan, property owners. Cheryl Andreason and Kevin McEneaney, McEneaney Survey Associates, Inc., surveyor. Residence C District. Map 20, Lot 16-2.
- I recommend that the board discuss the project, vote to endorse issuance of building permits for the lot (See Town Council below), and schedule a site walk. The public hearing is scheduled for July 27.

Please note the following:

Background. Lot 16-2 is a lot of record located off Durham Point Road. It is a vacant lot with frontage on Little Bay and is thus subject to the Durham Shoreland Protection Overlay District. A variance was issued on September 13, 2005 to allow for a single family house within the shoreland setback. A conditional use is requested now for the driveway, walkways, and utilities which would be located within the 250 foot district (A house is not allowed by conditional use thus a variance was needed).

Location. Lot 16-2 is shown on the tax map below (The map is somewhat mislabeled; Lot 16-2 is situated just north of Lot 16-1). It is located off Durham Point Road and accessed by a private road/shared driveway through Lot 16-6.



Conditional Use. Driveways and utilities are allowed in the Shoreland Protection Overlay District by conditional use.

Conditional use criteria – SPOD. The applicant has addressed the 4 criteria, below, in the application. The Zoning Ordinance states:

175-72. Conditional Uses in the SPO District.

...

B. The Planning Board shall approve a Conditional Use Permit for a use in the SPO 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 SPO 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 adjacent shoreland and waterbody as well as downstream waterbodies, 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 pre-existing condition and grade at the time of application for the Conditional Use Permit.*

Conservation Commission. This application will be reviewed by the Conservation Commission on July 14.

General conditional use criteria. The applicant has addressed the 8 general criteria from Article VII Conditional Use Permits in their application.

Dock. The applicant has also submitted an application for repairs to an existing dock for the property. A dock is allowed by conditional use. This application was just received so it will be first presented at the July 27 meeting with a public hearing likely scheduled for August 10. If the Planning Board conducts a site walk for the driveway and utilities we could look at the dock at the same time.

Town Council review. This is on the Town Council's agenda on July 18 for consideration. Per RSA 674:41, below, approval from Town Council is needed for issuance of a building permit. In order to expedite the process I asked to place this on the July 18 agenda. If the board was comfortable making a recommendation for issuance of building permits, in general for the lot, then the Town Council could possibly take action on July 18. Such a recommendation does not mean that the board is endorsing the conditional use, but rather that issuance of a building permit off the private road on this existing vacant lot is reasonable

Town Planner's Project Review – 269 Durham Point Road conditional use

(subject to obtaining other approvals that would be needed). If the board preferred to do this as part of the approval of the conditional use, then the Town Council could postpone action to a later meeting. I am checking now with the Town Attorney to confirm that this approval is needed given that several other houses have been built off this road.

RSA 674:41 Erection of Buildings on Streets; Appeals. –

I. From and after the time when a planning board shall expressly have been granted the authority to approve or disapprove plats by a municipality, as described in RSA 674:35, no building shall be erected on any lot within any part of the municipality nor shall a building permit be issued for the erection of a building unless the street giving access to the lot upon which such building is proposed to be placed: ...

(d) Is a private road, provided that:

(1) The local governing body, after review and comment by the planning board, has voted to authorize the issuance of building permits for the erection of buildings on said private road or portion thereof; and

(2) The municipality neither assumes responsibility for maintenance of said private roads nor liability for any damages resulting from the use thereof; and

(3) Prior to the issuance of a building permit, the applicant shall produce evidence that notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds for the lot for which the building permit is sought;

Indemnification form. An indemnification form would be required in accordance with RSA 674:41 above.

Variance.

The variance for the house was based on the plans submitted to the ZBA. The variance states, "...in accordance with the submitted plan dated July 27, 2004 and the associated dimension sheet with the exception that the setback will be 80 feet from the reference high tide line." The building will actually be set back 100 feet. A variance was also granted from the minimum side setbacks which are 50 feet in the Residence C district.

State permit. A permit will be required from NHDES as the lot is subject to the NH Shoreland Protection Act (RSA 483B).

Frontage. This is a nonconforming lot by virtue of street frontage but it may still be developed for a single family house pursuant to Section 175-29. Nonconforming Lots.