



**TOWN OF DURHAM**  
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***Town Planner's Recommendation***  
**Wednesday, July 27, 2016**

**269 Durham Point Road – Construction within SPOD.** Conditional use for 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. Kevin McEneaney and Cheryl Andreason, McEneaney Survey Associates, Inc., surveyor. Residence C District. Map 20, Lot 16-2.

- I recommend approval as stated below (subject to change based on site walk and public hearing both scheduled for July 27).

Please note the following:

- 1) Conditional use. The proposed driveway, walkways, and utilities are allowed as follows:

*175-72. Conditional Uses in the SPO District.*

*The following uses shall be permitted as conditional uses in the SPO District provided that the use is allowed in the underlying zoning district and a Conditional Use Permit is granted by the Planning Board in accordance with Article VII:*

*The construction of streets, roads, access ways, bridge crossings, and utilities including pipelines, power lines, and transmission lines;*

- 2) Conditional use procedure. The applicant has addressed the eight general criteria from Article VII Conditional Use Permits in their application. The applicant has placed their sign on the property about the public hearing. Approval requires an affirmative vote of 5 Planning Board members.

- 3) SPO criteria. 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.*

4) Conservation Commission. The applicant met with the Conservation Commission on July 14. The commission agreed that the four required criteria in the SPOD were met as follows:

*“The Conservation Commission reviewed an application for a new home and driveway reconfiguration at 269 Durham Point Road Durham, NH 03824.*

*The plan from Kevin McEneaney of McEneaney Survey Associates proposes a new driveway and utility layout in the Shoreland Protection District.*

*The Conservation Commission reviewed the application and the criteria in 175-71, 175-72, and 175-75 (Performance Standards). The applicant satisfactorily answered questions about the method and performance standards in 175-75.*

*The Conservation Commission agreed that the 4 standards in 175-72 are met in the application and the Commission recommends approval of the application by the Planning Board.*

*Thank you,  
Robert Sullivan”*

- 5) Dock. The applicant has also submitted a separate application for a new dock for the property.
- 6) Town Council review. The Town Council postponed its consideration of the issuance of building permits on the private road per RSA 674:41 to the August 1 meeting. However, this issue is separate from consideration of the conditional use now before the Planning Board.

**\*Draft\***

**NOTICE OF DECISION**

**Project Name:** 269 Durham Point Road – driveway, walkways, and utilities  
**Project Description:** Conditional use in Shoreland Protection Overlay District  
**Applicant:** Robert and Brenda Ryan  
**Property Owner:** Robert and Brenda Ryan

**Surveyor:** McEaney Survey Associates, Inc.  
**Map and Lot:** Map 20, Lot 16-2  
**Zoning:** Residence Coastal  
**Date of approval:** July 27, 2016

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Planning Board approved the conditional use for the driveway, walkways, and utilities for the subject lot as follows:

- 1) Application. The application is approved based upon the information and drawing presented in the application.
- 2) Conditions. All components of the application, as presented, apply to this approval, unless reasonable deemed irrelevant by the Town.
- 3) State permit. A permit will be needed from NHDES as the lot is subject to the NH Shoreland Protection Act (RSA 483B), unless NHDES determines that the permit is not required.
- 4) Findings of fact. As part of this review and approval the Durham Planning Board finds the following:
  - a) The applicant submitted an application, supporting documents, and plans for the project;
  - b) The Planning Board held a site walk and a public hearing on July 27, 2016.
  - c) Conditional Use. Driveways, walkways, and utilities are allowed in the Shoreland Protection Overlay District by conditional use.
  - d) Criteria. The Planning Board voted to approve the conditional use after a finding that the eight standard conditional use criteria and the four conditional use criteria in the Shoreland Protection Overlay District as listed in Section 175-72 are met.
  - e) A variance was issued on September 13, 2005 to allow for a single family house within the shoreland setback and other reduced setbacks from the Zoning Ordinance, including the placement of the septic system.
  - f) Independent from this application, RSA 674:41 applies to issuance of a building permit on this private road.
  - g) 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. The proposal complies with the requirements of that section.
  - h) Direct abutters on both sides of the subject lot sent emails to the Town stating their support for the proposed house plans.
  - i) Substantial records are maintained of the process and documentation submitted in the Planning Department. A record of documentation and a timeline of the project will be prepared as needed.