



TOWN OF DURHAM
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Town Planner's Project Review
Wednesday, December 14, 2016

- XI. **250 Newmarket Road – Patio.** Conditional use to install a patio adjacent to an existing single-family house within the wetland and shoreland overlay districts. Jason and Megan Lenk, property owners. Rural District. Map 18, Lot 3-1.
- I recommend that the board set a public hearing for January 25 and a site walk if the board thinks that would be useful.

Please note the following:

- 1) **Site walk.** Do the Planning Board members think that a site walk would be worthwhile? The patio area is very small and would have minimal impact. On the other hand, the board members could see how close it is to the river and examine the slope of the river bank.
- 2) **Public hearing.** I recommend the public hearing be scheduled for January 25 rather than January 11 because the Conservation Commission will review the conditional use at its next meeting on January 12. The Commission is not meeting in December.
- 3) **Conditional Use.** A patio is allowed as an “accessory structure” by conditional use in the Wetland Conservation and Shoreland Protection Overlay Districts. The setback from the Lamprey River in the Shoreland Protection Overlay District for structures is 125 feet. The setback from wetlands in the Wetland Conservation Overlay District is 100 feet. The Lamprey River is considered a (riverine) wetland. The applicant has addressed the 8 general criteria and the 4 specific criteria for the Wetland and Shoreland Zones in their narrative.
- 4) **Specific Criteria.** The 4 specific criteria are as follows. The Conservation Commission will review these criteria and give its recommendations.

The Planning Board shall approve a Conditional Use Permit for a use in the WCO District and SPO 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:

- a. *There is no alternative location on the parcel that is outside of the WCO District/SPO District that is feasible for the proposed use;*
- b. *The amount of soil disturbance will be the minimum necessary for the construction and operation of the facilities as determined by the Planning Board;*

- c. *The location, design, construction, and maintenance of the facilities will minimize any detrimental impact on the wetland on the adjacent shoreland and waterbody as well as downstream waterbodies, and mitigation activities will be undertaken to counterbalance any adverse impacts; and*
- d. *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.*

- 5) Reference Line/Wetland Boundary. *The conditional use for the wetland is measured from the wetland boundary. The conditional use for the shoreland is measured from the reference line or the ordinary high water mark. The drawing shows the low water line and edge of the river in the spring of 2009 and a corner boundary pin. There is a steep slope leading down to the river. I believe that this information is sufficient for a review of the conditional use and do not think that it would be appropriate to require the applicant to have a wetland scientist identify the specific wetland boundary and high water line on the plans. The high water line and wetland boundary are almost certainly further from the house/patio than the top of the slope (and the corner pin), which is readily viewed on site. Any approval could simply refer to the proposed location of the patio as rendered relative to the corner boundary pin (about 56 feet away), 2009 edge of the river (about 60 feet), and/or the top of slope. This information should be adequate for review because the proposal is minimal in scope and impact, the patio will use permeable pavers, the house is already situated within the buffer area, and the position of the patio relative to the river and slope is clearly seen on site. If the Planning Board thinks that these lines should be specifically delineated, however, the applicant can be so advised. (Note that the corner pin is not actually the corner of the property. The actual property boundary extends into the river but surveyors mark a “tie line” located on upland, rather than within the river, showing the approximate boundary.) The Planning Board could look at this during a site walk if desired.
- 6) Flood Zone. The entire lot is in a flood zone, Zone AE with a base flood elevation of 35.6 feet. The flood elevation refers to finished floor area, not outdoor patios.
- 7) TRG. I did not present this project to the Technical Review Group due to its minor scope but forwarded the application to TRG members. We have not received any comments.
- 8) Conclusion. I visited the site and reviewed the application, including the applicant’s response to the criteria. Pending review by the Conservation Commission, I do not see any concerns with the application at this point.