



TOWN OF DURHAM
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Town Planner's Review
Wednesday, May 26, 2021

IX. **190 Piscataqua Road – Conditional Use.** Conditional use for accessory structures, related to new single-family house, proposed in the shoreland and wetland overlay districts. Map 12, Lot 7. Tom and Erin Daly, lot owners. Eric Buck, Landscape Architect, Terrain Planning & Design. Residence Coastal District.

➤ I recommend that the board schedule a site walk and set the public hearing for June 9

Please note the following:

- 1) The application is for a conditional use for a permeable patio, retaining walls, spa, swimming pool, steps, paths, permeable pavement driveway, and stormwater treatment areas. The application is involved so I recommend a site walk.
- 2) These structures are variously located in the Shoreland Protection Overlay District (in the vicinity of Little Bay), the Wetland Conservation Overlay District (near the wetland/wetland finger located on the northerly side), and in both overlay districts (They overlap on the easterly side).
- 3) The Conservation Commission is reviewing the application on May 24 and will make a recommendation to the Planning Board based on the 4 specific criteria in the SPOD and WCOD (shown at the bottom). The Planning Board will also consider the 8 general criteria and make the final determination.
- 4) Rather than parse out which items fall in the SPOD and/or WCOD, I suggest the board just review the various items together for simplicity since the criteria are virtually identical and the board can make its judgment on the particulars of each item anyway.
- 5) Erik Buck, the applicant's landscape architect will provide a colored rendering of the site (Sheet L-01) to enhance readability. I will forward this to the board as soon as I receive it (if it is not already included in the packet).
- 6) The applicant redesigned the house so that it meets the zoning requirements so no special approvals are needed for the house, other than the standard building permit. The footprint for the house fits within the triangle situated beyond the setbacks/buffers, the footprint for the existing house (which will be demolished), and an allowance under the ordinance for a 15% expansion beyond the existing house footprint. But the conditional use is needed for the various accessory structures and elements.

- 7) The applicant met with the Conservation Commission on January 25 for a conceptual discussion about an earlier plan which required a variance for the house. The commission held a site walk and then continued the discussion on February 22. The commission offered several comments for the Zoning Board of Adjustment to provide the ZBA its perspective on the pertinent environmental issues. The ZBA denied the application for the variance on March 16. The applicant requested a rehearing with the ZBA and the ZBA approved the request so it will be reheard at the June 8 meeting. Thus, depending on the outcome of that review and the applicant's plans it is possible that the application before the board will change. But the board should move forward now with review of the application as now submitted.
- 8) The application also includes review of a shoreline buffer planting plan and a planting plan adjacent to the wetland. These plants are allowed as a Permitted Use A in the SPOD and WCOD so this is not a conditional use. The board should use its judgment in the review as to the appropriateness of the plan. The ordinance allows for native, naturalized species, non-native non-invasive species, and wetland species.
- 9) The Conservation Commission may not make its recommendation on May 24. If the commission continues the review to the June 28 meeting and makes its recommendation then, this will occur after both June Planning Board meetings, so the board may wish to discuss with the applicant their timeframe for the project.
- 10) There is a significant amount of proposed construction within the overlay districts but I think the proposal is reasonable. The extent of the patio and driveway is consistent with this type of house on a lot situated on the water. There is a high level of constraint posed by the bay situated on two sides and the wetland along the third side, so some flexibility is necessary. Note that the applicant has been extremely diligent in working with the Town, holding conceptual discussions with the Conservation Commission, working with the staff, providing detailed information, and making revisions to the plans. The existing leach field will be removed and a new one outside the buffers will be installed, the patio will be permeable, the driveway will be permeable, and an intensive shoreline buffer and wetland planting plan is included.
- 11) Here are the 4 criteria for the SPOD and WCOD. They are identical except for the respective references that I underlined below.

The Planning Board shall approve a Conditional Use Permit for a use in the SPOD/WCOD 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 SPOD/WCOD that is reasonable practical 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 [SPOD]/wetland [WCOD], 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.