



**TOWN OF DURHAM**  
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**Town Planner's Review**  
**Wednesday, April 12, 2023**

- X. **Amendments to WCOD and SPOD.** Amendments to the Wetland Conservation and Shoreland Protection Overlay Districts proposed by the Conservation Commission.
- I recommend the board schedule a public hearing when appropriate.

Please note the following:

- 1) The Conservation Commission voted unanimously to recommend these amendments at its meeting on March 27, 2023.
- 2) The commission appointed a committee to develop changes to the Wetland Conservation Overlay District (WCOD) and the Shoreland Protection Overlay District (SPOD). The members of the committee are Conservation Commission members Neil Slepian and Dwight Trueblood, Planning Board members Paul Rasmussen and Emily Friedrichs, and former Conservation Commission chair and current Town Council chair Sally Needell. The commission asked Ms. Needell to serve and asked the Planning Board to appoint one or two members which it did.
- 3) The Conservation Commission asked the committee to do two things: 1) develop changes to the four criteria for conditional uses in the WCOD and SPOD; and 2) review the entirety of these two articles and propose appropriate changes. The committee completed the first task and continues work on the second.
- 4) See the proposed amendments. The main change is to the criteria for conditional uses in Sections 175-61.B. (WCOD) and 175-72.B. (SPOD). Secondary changes, dealing with formatting and process, are also included in Sections 175-59.C., 175-60.B., and 175-61.A. (WCOD) and in Sections 175-70., 175-71.B., and 175-72.A. (SPOD).
- 5) The purpose of the proposed changes in these criteria is to provide the Conservation Commission and Planning Board with more flexibility in reviewing conditional use applications. The impetus was the Gerrish Drive subdivision application where comparison of a Bagdad Road access was precluded because that area is located in the WCOD (though use of that access was probably not practical for other reasons). The impetus for the new B.1.c) was the conditional use for a driveway off Durham Point Road to access a new house. It would have been practical for the board to require the driveway be situated close to Durham Point Road to entirely avoid the wetland but it would probably not have been reasonable or fair since the applicant purchased the large parcel to be build closer to the Oyster River.

- 6) Regarding the conditional use criteria, the new B.1. takes the place of the current B.1., the new B.2. takes the place of the current B.2. and B.3., and the new B.3. takes the place of the current B.4. The purpose of the new B.4. is to allow for denial of an application in the unusual situation where the adverse impact on the wetland or water resource would be extreme. Inclusion of this provision is especially useful if the 8 general conditional use criteria are removed from consideration for conditional uses in the near future in the WCOD and SPOD as has been recommended by some, including the Town Planner. Most of those criteria are not applicable to conditional uses in the WCOD and SPOD and the proposed new language in B.4. is probably better suited to the WCOD and SPOD than the general criterion 5. which deals with natural resources. The purpose of Section 175-61.C. and 175-72.C. is to define “ecological values” which is used in the new B.1.
- 7) As with any amendment to the zoning ordinance proposed by a Town board (like the agriculture ordinance recommended by the Agricultural Commission and the solar ordinance recommended by the Energy Committee earlier), the Planning Board can now do whatever it deems appropriate with this draft. The board can kill the proposal, table it, make changes and then hold a public hearing, or hold a public hearing on this draft. After a hearing, the board could vote to initiate the amendment and then forward it to Town Council for consideration.