



Londonderry Conservation Commission
Tuesday, July 23, 2019
Minutes

1 **Present:** Marge Badois, Chair; Gene Harrington, Vice Chair; Mike Noone, member; Bob Maxwell,
2 member; Deb Lievens, member; Mike Byerly, member; Richard Floyd, member; Jocelyn Demas,
3 alternate member; and Mike Speltz, alternate member
4

5 **Absent:** Town Council liaison member
6

7 **Also present:** Amy Kizak, GIS Manager/Comprehensive Planner and Beth Morrison, Recording Secretary
8

9 Marge Badois called the meeting to order at 7:30 pm.

10 **DRC & CUP – Natale Subdivision, Map 12 Lot 48-0 – Chris Hickey:** Chris Hickey from Eric C. Mitchell &
11 Associates, 106 S River Road, Bedford, NH introduced himself to the Commission. C Hickey passed out a
12 copy of the Conditional Use Permit (CUP) and plans for the Commission to review. He explained that this
13 is a two lot subdivision on 17.78 acres roughly where there is an existing house with on-site septic and
14 on-site well. He said the owner is looking to subdivide off a piece on the easterly side that is roughly a 7
15 acre lot, noting that about 4.5 acres is encumbered by an Eversource easement, which makes access
16 create a buffer impact. He noted that approximately 5,800 SF of buffer impact is expected for the
17 driveway, detention pond and a culvert to outlet the drainage. M Badois asked if it was a 100 foot
18 buffer. C Hickey said that it was partially, as when they had the wetlands delineated into poorly drained
19 and very poorly drained, they are showing the limits of the very poorly drained as the limits of the 50
20 foot versus 100 foot setback. M Speltz noted that the ordinance does not make that distinction and is
21 only related to the size of the wetland, so if the size narrows down to 50 feet then it becomes two
22 separate wetlands, and the smaller one would possibly qualify for the 50 feet. C Hickey reviewed with
23 the Commission on the plans where he determined the buffer impact would be. G Harrington pointed
24 out that the plans show the edge of wet farther out than what they had marked for impact and noted
25 that they should measure 100 feet from the edge of wet. C Hickey told the Commission that they can
26 change it if that is how it should be done stating there will be more square footage impact than what is
27 stated tonight on the plan. M Speltz asked if the driveway was the cause of buffer impact. C Hickey
28 stated that it was. M Badois asked why the driveway is not in the Eversource easement. C Hickey said
29 that part of the reason it cannot be in the easement is related to grading and that Eversource might not
30 let them put a driveway in the easement. Harrington asked if they had approached Eversource about
31 potentially putting a driveway into the easement. C Hickey stated that they had not. M Speltz stated
32 that in his opinion, that should have been the first step, as it is difficult to make the argument that a CUP
33 is needed for the creation of a new lot where the driveway does not fit. G Harrington made a motion for
34 the applicant to approach Eversource to see if the driveway can be placed in the easement and out of
35 the buffer. R Floyd seconded the motion. The motion passed, 7-0-0. C Hickey asked if they can come



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36 back before the Commission if Eversource refuses to let them put the driveway in the easement. M
37 Speltz said that they can come back before the Commission.

38 **DRC: Natale Subdivision, Map 12 Lot 48-0**

39 The Commissioners commented that there appears to be an option for the driveway to be moved out of
40 the buffer by using the Eversource easement, which the applicant had not explored. The Commissioners
41 also commented that the buffers were not appropriately designated and should be corrected.

42 **Recommendation on ZBA variance application for Map 5 Lot 10-34 – 8 Tanager Way:** Jeff Moulton,
43 engineer from Moulton Engineering P.L.L.C., 5 Taylor Brook Lane, Derry, NH introduced himself to the
44 Commission. J Moulton passed out packet the applicant had made to the Commission for their review.
45 He explained that the applicant had hired a builder to put on a sunroom, patio and roof, but the builder
46 did not obtain the necessary permits. He said that the town found out and stopped the work. He told
47 the Commission that the work is encroaching in the Conservation Overlay District (COD) and the
48 applicant will have to apply for variances. M Badois asked if the sunroom exists. J Moulton said that it
49 partially exists, as some work was done before the stop work order was issued by the Town. J Moulton
50 told the Commission that there is 4.7 feet of encroachment for the sunroom for a total impact of 45 SF,
51 4.7 feet of encroachment for the covered roof for a total impact of 71 SF of impact and 3.8 feet of
52 encroachment for the patio for a total impact of 102 SF. He said that the drainage from the house and
53 the partially built additions will go directly down into the COD because there is about a 10 foot drop
54 from the house down to the brook. He noted that if the applicant had not gone into the COD with
55 encroachments, the additions would make the run-off problem worse. He explained that the owners
56 want to remediate this problem, if they are allowed to finish the project, by putting in a storm water
57 management system that meets the requirements of New Hampshire Department of Environmental
58 Services (NHDES). He explained that there would be gutters for the entire area that would be lead to a
59 central feeder into a dry well away from the COD. He pointed out that there is a propane tank within the
60 COD that was mistakenly put there when it was installed, they were told it had to be a certain distance
61 from the house for safety reasons. He said it lead the owners to believe that this was a safe distance for
62 the additions, but now understand that they were wrong and would like to fix them. M Speltz asked for
63 detail on the run-off the dry well could process in a 24-hour event and 48-hour event. J Moulton said
64 that NHDES has a 24-hour event requirement, but he has not sized it yet, pending the outcome of this
65 meeting. He said the owners will build a system that can 100% handle a 24-hour event. D Lievens asked
66 if the owners would consider a rain garden instead of a dry well. J Moulton said that was a possibility to
67 put a rain garden in front of the house. M Speltz asked if the soils had been looked at to see if they will
68 support detention. J Moulton said that has not been done yet and would be part of the dry well sizing.
69 M Noone asked if the pool was in the COD. J Moulton said he measured everything himself and is sure it



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70 is not in the COD. M Badois asked when the addition was built. J Moulton said he believed a couple
71 years ago. M Speltz asked if the wetland was re-delineated for the plan. J Moulton said it was not. D
72 Lievens asked if they knew where the buffer line was. J Moulton said the applicant was aware of the
73 buffer, but not specifically where it started. D Lievens said that the buffer should be marked so that
74 there is no confusion. M Byerly asked who the builder was. J Moulton said he did not know that
75 information. M Speltz asked why that would matter. M Byerly said he would be more inclined to vote for
76 builder error versus home owner error. M Speltz said that he did not think that was in the Commission's
77 purview to consider. He said that the applicant is offering the Commission an improvement and if some
78 variances were granted, the dry well solution would be a positive conservation outcome. He said that if
79 the Commission were to recommend approval of some of the variances a condition should be that the
80 Department of Public Works and Engineering (DPW) review and approve the storm water treatment
81 plan. M Byerly asked if the sunroom was on top of the patio. J Moulton told him that the sunroom
82 comes up to the edge of the patio. G Harrington explained that the sunroom is a connection between
83 house and the roof over the patio. D Lievens voiced her frustration about having regulations in place
84 and residents try to put build something and then need a variance to fix it, when it should not have been
85 built in the first place. B Maxwell said that starting to do this work without a permit was a flagrant
86 decision. J Moulton reiterated that the homeowner believed the builder had the appropriate permits
87 before starting construction. G Harrington asked for the dimensions of the sunroom. J Moulton said it is
88 13. 7 feet by 26 feet. G Harrington asked if the homeowner had considered shaving off the 4.7 feet that
89 was encroaching, leaving a 9 foot wide room. J Moulton said that if the homeowner did build a 9 foot
90 sunroom, and he was not here before the Commission tonight, he said in his opinion, it would be more
91 detrimental to the COD because of the ground slope. M Speltz asked about pressure treated wood. J
92 Moulton said the builder used four beams in the sunroom that were pressure treated. The Commission
93 decided to take each variance separately and vote on them:

- 94 (1) Section 4.6.1.3.10 to allow a 364 SF accessory structure sunroom in the conservation
95 overlay district where a maximum accessory structure of 200 SF is allowed (this will
96 encroach into the CO district by 4.7' – total impact of 45 SF)

97
98 **G Harrington made a motion to recommend approval of Variance (1) to the ZBA with the condition that**
99 **the applicant put in a storm water mitigation system, as well as appropriate marking the COD with**
100 **buffer signs. M Byerly seconded the motion. The motion passed, 6-1-0.**

- 101 (2) Section 4.6.1.3.10 to allow an 210 SF accessory structure roof structure in the
102 conservation overlay district where a maximum accessory structure of 200 SF is allowed
103 (this will encroach into the CO district by 4.7' – total impact of 71 SF)



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104 (3) Section 4.6.1.3.10 to allow 896 SF accessory structure pool apron (cement patio) in
105 the conservation overlay district where a maximum accessory structure of 200 SF is
106 allowed (this will encroach into the CO district by 3.8' – total impact of 102 SF)

107

108 **G Harrington made a motion to not recommend Variance (2) and Variance (3) to the ZBA. B Maxwell**
109 **seconded the motion. The motion passed, 7-0-0.**

110 (4) Section 4.6.1.3.10 to allow use of pressure treated wood for the construction of the
111 sunroom and roof structure in the conservation overlay district, which is prohibited;

112 **M Byerly made a motion to recommend approval of Variance (4) to the ZBA as long as no additional**
113 **pressure treated wood be used other than the four beams that were already used in construction, as**
114 **well as the applicant installing a storm water mitigation treatment system. B Maxwell seconded the**
115 **motion. The motion passed, 6-1-0.**

116 (5) Section 4.6.1.3.10 to allow use asphalt shingles for the construction of the sunroom
117 and roof structure in the conservation overlay district, which is prohibited;

118 **G Harrington made a motion to not recommend approval of Variance (5) to the ZBA. M Noone**
119 **seconded the motion. The motion passed, 5-2-0.**

120 (6) Section 4.6.1.3.12 to allow the use of a sunroom in the conservation overlay district,
121 which is prohibited;

122 **M Byerly made a motion to recommend approval of Variance (6) to the ZBA with the condition that**
123 **the applicant install a storm water treatment system. G Harrington seconded the motion. The motion**
124 **passed, 6-1-0.**

125 (7) Section 4.6.1.3.12 to allow the use of a roof overhang in the conservation overlay
126 district which is prohibited; and

127 (8) Section 4.6.1.3.12 to allow the use of a patio in the conservation overlay district, which
128 is prohibited.

129 **B Maxwell made a motion to not recommend approval of Variance (7) and Variance (8) to the ZBA. G**
130 **Harrington seconded the motion. The motion passed, 7-0-0.**

131 The Commissioners also had the following comments for the ZBA:



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132 **1. The proposed storm water management system, if approved as a condition, has to be reviewed**
133 **and approved by the Department of Public Works and Engineering.**

1342. **The Conservation Commission in its recommendations to the ZBA is guided by the principle of trying to**
135 **achieve greater conservation outcome than would be the case if the ZBA did not grant the variances**
136 **that the Commission is recommending for approval, including the recommended conditions.**

137

138 M Badois informed the Commission that grass clippings had been observed by someone near the vicinity
139 of this property and it appears to be coming from 8 Tanager Way. She asked for the homeowner to be
140 notified and requested to cease and desist. J Moulton said he would pass along the message.

141 **Conservation Ranger:** Glenn Aprile, Conservation Ranger, addressed the Commission. He informed the
142 Commission that he keeps a daily log of events and would forward this to the Commission. He gave an
143 overview to the Commission of some activity that he has seen at Kendall Pond. He told the Commission
144 that he was stopped by Deanna Mele who does not like the turtle signs being folded in half. M Badois
145 said that the experts recommend the signs be folded in half from October until May and they are to stay
146 that way. He stated that he met with the homeowner of 15 Gilcreast and the homeowner agrees to
147 cooperate. He reviewed his hours with the Commission, gave them his new land line number (603) 425-
148 5903. David Ellis, Londonderry resident at One Wilshire Place, introduced himself to Glenn and told him
149 that he would be happy to help him with anything about the Musquash.

150 **Unfinished Business**

151 **Kendall Pond Invasives:** M Badois told the Commission that she printed out a packet she received from
152 the Nature Groupies and would like to have an invasive cleaning day after bug season.

153 **Finance:** M Badois said that the Commission needs to transfer \$75,000 to the Police Department for the
154 ranger position and a legal notice invoice for \$62.20 needed to be paid.

155 D Lievens made a motion to send \$75,000 to the Police Department for the Conservation Ranger
156 through Finance. G Harrington seconded the motion. The motion passed, 7-0-0.

157 G Harrington made a motion to authorize the chair to pay the legal notice invoice for \$62.20 out of the
158 line item budget. M Noone seconded the motion. The motion passed, 7-0-0.

159 **New Business:**

160 **Email:** M Badois told the Commission that Kevin Smith, Town Manager, received an email from
161 someone inquiring about making Scobie Pond accessible for shoreline fishing. She said that the email
162 cited Darrah Pond in Litchfield to use as an example of what he would like done. She noted that the



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163 resident is requesting a public beach. M Badois said she would reach out to the resident and inform
164 them on the Stantec plan the Commission has. M Noone said that he thought they reviewed this with
165 the abutters of Scobie Pond and no one wanted this.

166 **South Road:** M Noone informed the Commission that he received a list from New Hampshire
167 Department of Environmental Services (NHDES) with a list of plants that the developer has not provided
168 to them when they should have. He asked if they are only supposed to be excavating 2/3 of the soil. G
169 Harrington said the soil is being moved.

170 **Mitigation Handout:** M Speltz passed out a handout he made of 35 properties he has highlighted for
171 the Commission to review for potential mitigation. He reviewed the color coding scheme he used for
172 ranking the properties with the Commission. He asked the Commission to review the information and
173 email him with thoughts or concerns.

174 **Non-Public Session**

175 G Harrington made a motion to go into non-public session per RSA 91-A:3 for the purpose of discussing a
176 matter related to property acquisition. The motion was seconded by M Noone. The motion was passed
177 by M Badois, M Byerly, D Lievens, B Maxwell, M Noone, G Harrington, R Floyd, M Speltz and J Demas
178 with a unanimous roll call vote. G Harrington made a motion to leave non-public session and to seal the
179 minutes of the non-public session indefinitely per RSA 91-A:3. M Noone seconded the motion. The
180 motion passed, 7-0-0.

181 D Lievens made a motion to authorize up to \$5,000 from the Conservation Fund for the Commission's
182 half of the appraisal for property discussed in tonight's non-public session. M Noone seconded the
183 motion. The motion passed, 7-0-0.

184 **Minutes:** The Commissioners went over the public minutes from July 9, 2019. M Noone made a motion
185 to accept the minutes as amended. G Harrington seconded the motion. The motion passed, 4-0-3, with
186 D Lievens, R Floyd and M Byerly abstaining.

187 **Adjournment:** G Harrington made a motion to adjourn the meeting at 10:00 p.m. M Byerly seconded
188 the motion. The motion passed, 7-0-0.

189 Respectfully Submitted,
190 Beth Morrison
191 Recording secretary