

**DURHAM CONSERVATION COMMISSION SPECIAL MEETING
WEDNESDAY, DECEMBER 9, 2020 – 7:00 PM
DURHAM TOWN HALL - COUNCIL CHAMBERS - DURHAM, NH**

Note: Due to the Coronavirus pandemic, most members and presenters attended via Zoom video conferencing while a limited number were in Council Chambers.

Members Present: Chair Sally Needell; James Bubar; Vice-Chair Mary Ann Krebs; Jake Kritzer; John Nachilly; Walter Rous and Alternate Roanne Robbins.

Members Absent: Coleen Fuerst

Also Present: Contract Planner Rick Taintor, Project Engineer Joe Persechino and Minute Taker Lucie Bryar

I. Call to Order and Reading of Covid Emergency Preamble

Chair Sally Needell called the meeting to order at 7:00 p.m. and read a required statement pursuant to the Governor’s Emergency Order #12 pertaining to meeting remotely during the Covid-19 pandemic and outlining how the public can continue to participate. More information is available on the town of Durham website.

II. Roll Call

Roll call was conducted and alternate Roanne Robbins was seated as a voting member, temporarily filling in for John Nachilly. She was later recognized as filling in for Coleen Fuerst.

III. Approval of Agenda

Ms. Needell MOVED to approve the agenda as submitted; SECONDED by Mr. Rous, APPROVED unanimously, 6-0, Motion carries.

Chair Needell said this is a special meeting of the Conservation Committee; although the public can listen and watch, there will be no public comments tonight.

IV. Mill Plaza – Conditional Use in WCOD and SPOD. 7 Mill Road. Application for conditional use for construction within the Wetland Conservation and Shoreland Protection Overlay Districts. The Commission will make a recommendation to the Planning Board as part of the site plan application for redevelopment of the site. Sean McCauley, agent. Joe Persechino, Tighe & Bond, engineer. (Rick Taintor is the acting Town Planner)

Chair Needell said the Conservation Commission’s role is to provide recommendations to the Planning Board regarding conditional use requested by the applicant. Engineer Joe Persechino is here this evening only if needed to clarify the information he presented at prior meetings.

Mr. Kritzer asked if the Commission needs to make just one overall recommendation to the Planning Board and Chair Needell said they are free to comment on different aspects or individual pieces of the application.

Mr. Rous began by commenting on the pavement within the wetland buffer and said he has considered if there is another place for the pavement (which is one criteria used to determine conditional use). In his view there does not appear to be another spot, only due to the proposed buildings and Hannaford's demands. He said, "I don't see where Hannaford can govern our administration of the code."

Chair Needell referenced Exhibit A attached to the Settlement Agreement between the Town of Durham and Colonial Durham Associates and noted the entire area between the building and the brook was green space on the previous plan. That is not the case with the new plan. Mr. Rous asked if Exhibit A is part of the settlement or is meant to be an example only.

Contract Planner Rick Taintor said the plan attached to the Settlement Agreement was meant to be a guide. He added it's Town Council's job to determine if the current plan is consistent with the Settlement Agreement – not the job of the Conservation Commission.

Mr. Kritzer said the proposal before them definitely improves stormwater management at Mill Plaza. He does not see how adding a retention basin below what is already paved would be a negative, since the area has already been disturbed. It's his view that the wetlands buffer on this parcel exists only on paper and is not a true buffer.

There was general consensus among Commissioners that the proposed stormwater management system is well-engineered and would be an improvement over current conditions which allow untreated water to flow into the brook.

Mr. Rous said the plan still does not meet distance requirements from the buffer, however. He does not see how the Commission can ignore wetland requirements on a major project like this – particularly when much smaller projects are held to the code. He acknowledged Mill Plaza is only 4.5% of the total paved area in the watershed, but said it's still not an excuse to ignore the code.

Vice Chair Krebs asked if the parking lot encroaching into the buffer is "grandfathered" in and Chair Needell said any proposed changes to the site are not grandfathered. This includes grading, utility lines, parking, etc. Ms. Krebs asked if it's possible to ask the developer to restore the original buffer and the general consensus was this should be part of the discussion.

Mr. Rous mentioned the "goodwill and cooperation" talk that he heard on the site walk. While the plan shows good engineering and architecture, he asked why it can't be achieved further away from the brook?

Ms. Robbins noted that many letters and comments from residents expressed a broken trust with the developer. She said, "Is anyone going to trust that the right thing is going to happen?"

Mr. Bubar said the Wetlands Management Plan has no provisions for restoring the stream banks; it only restores what would be disturbed during construction.

Mr. Rous said the Stormwater Management Maintenance Plan is not very specific and suggested perhaps the Commission could ask for the brook to be monitored for harmful elements. It's unclear how the town will know the system is working properly.

Chair Needell said the Commission can recommend actions for lack of compliance with maintenance. She also does not want to see any snow stored within the buffer and wants assurances there will be no herbicides, pesticides, or fertilizer on the landscape plots.

A number of other ideas and issues were brought up during the meeting, including:

Location of the Proposed Stormwater Retention Basin

Chair Needell said two-thirds of the large basin is proposed for inside the buffer and she is concerned the area will need to be disturbed to install the basin.

Mr. Kritzer said the area is already paved; disturbing it and re-paving wouldn't have a significant impact, in his view. He does question if any construction should be allowed in the buffer, however.

Reconfiguration of the Entrance to Mill Plaza

Chair Needell said Exhibit A (attached to the legal settlement) showed a curved entrance away from the buffer. She wanted to know if this could be re-visited. Vice-Chair Krebs also expressed preference for a curved entrance.

Mr. Bubar said the other idea of moving the entrance (from Mill Road to Main Street) has failed to gain momentum and he's not aware of any traffic studies on this. An existing catch basin at the entrance dumps untreated water directly into the brook.

Acknowledging that there is zero buffer at the entrance, some commissioners said later in the discussion – perhaps the entrance could be exempted from their request to increase the buffer.

The Proposed Impervious Walkway

Some Commissioners believe the walkway could be pervious. In answer to a question about this, Engineer Joe Persechino said he believes the decision to use an impervious surface was based on a desire to match the existing walkway.

Potential for More Trash on the Site Due to Increased Development

Chair Needell raised the point about increased trash from the site that could eventually make its way into the brook. She asked if the developer could be asked to monitor and remove it.

Some Commissioners expressed the view that trash is the responsibility of the residents, not the developer. Mr. Kritzer said while he thought it might be worth mentioning, the Commission should not go too far with this request.

Proposed Excavation of Adjacent Hillside

Ms. Robbins said although it involves two separate applications, she finds it difficult to separate the potential impact on the brook of removing part of the hillside. “That environment is one piece,” she said, adding it’s possible flooding will happen as a result.

In answer to a question from Mr. Rous, Mr. Taintor said the adjacent hillside presents a challenge, because it’s outside the buffer but could definitely have an impact on the wetland. He noted while the Commission is free to comment on it, their official role is to make a recommendation on any work proposed within the buffers that is allowed by conditional use

Mr. Bubar said he believes the Commission should be concerned about the loss of the hillside since it will likely increase stormwater runoff. He believes any work on the hill will require an Alteration of Terrain application with NH DES, which is only completed once the town approves a site plan.

Mr. Kritzer said possibly the proposal to remove part of the hill could become part of the negotiations with the developer; i.e., if the hillside is going to be cut in half, then some of the wetland buffer needs to be restored.

Reducing Number of Parking Spaces

Commissioners asked about reducing the number of parking spaces – with an eye toward less impervious surfaces and/or taking parking outside of the buffer entirely. The new proposal calls for 411 parking spaces total.

Mr. Bubar said there is no plan to allow student parking here for the proposed residential units. Hannaford is requiring a certain number; the developer is looking to fit in a maximum number.

Mr. Kritzer said there are 30 parking spaces proposed in the buffer or 45 if you include those partially encroaching. “To fully reclaim the buffer would mean sacrificing 10% of the proposed parking spaces.”

Mr. Taintor later said the number of spaces required by zoning is 338; there are currently 345. The Settlement Agreement says more are allowed but is vague on the total number. He added it’s important to note that while the Town is requiring at least 80,000-90,000 square feet of commercial space, the developer is looking to maximize residential units. There appear to be competing goals.

The Impact of Upstream Activities on College Brook’s Watershed

Mr. Nachilly raised a number of points about disturbance to the brook occurring outside of the Mill Plaza site. He said this is already a “disturbed and highly-impacted” watershed with much of the disturbance occurring upstream.

He cited recent projects by UNH, including the expansion of Wildcat Stadium and the new nursing center – neither one coming before the Conservation Commission and both causing significant disturbance to the watershed. He said, “We’re spending a lot of effort trying to fix part of the problem.” Later he expressed the view that, “We’re holding this developer to different standards than we hold the town and the University.”

Recommending Partial Restoration of the Buffer

There was lengthy discussion about asking the developer to restore the buffer and the practicality of doing that -- given this is a highly-developed downtown site that has effectively had no buffer for years.

Mr. Rous acknowledged a 75-foot buffer may not be achievable in this case, but finds it unacceptable the current proposal ignores the buffer completely. He said, “There has to be give and take” [between the developer and the town] and added, “The town holds some cards.”

Ms. Robbins said she would like to see the town and the developer work together to restore part of the buffer and asked why Colonial Durham Associates hasn’t been held accountable for deterioration of the site.

Mr. Rous asked Mr. Taintor for clarification on a provision in the settlement that states the proposal will “increase the natural vegetation line.” Mr. Taintor said Town Council is responsible for determining if the application meets the provision. He said it’s clear the current application doesn’t increase the natural buffer along the southern property line, but recommends the Conservation Commission look for ways to improve the buffer, even if it can’t be increased.

There was discussion about how much of the buffer could reasonably be restored, given that it ranges from zero at the entrance to almost 75-feet at the southern end. Commissioners talked about which components could be moved from the buffer (sidewalk, parking, roadway, stormwater retention basin, etc.) and also discussed various scenarios to achieve a reasonable increase.

Mr. Kritzer recommended asking for a 50-foot buffer (instead of the required 75) and noted later in the discussion, there is some precedent for this approach in already compromised wetlands. There was also discussion about asking for a sitewide average, to account for the different terrain and uses.

Mr. Kritzer said the role of any Conservation Commission is to do everything possible to protect functioning buffers and where a buffer has been impacted, “we should do what we can to recover it.” He noted increasing the buffer was also stipulated in the Settlement Agreement.

Impact of Increasing Buffer on Viability of the Project

Mr. Taintor said if the Commission asks to have all parking moved outside the buffer, there would be a significant impact to the site plan. Proposing to move the roadway may affect the viability of the project; he’s not sure.

He summarized various options expressed tonight:

- 1.) Ask for an increase in the buffer, e.g., adding 10 feet or varying distances throughout the site, based on topography;
- 2.) Move all parking outside the buffer which would increase it more than 10 feet;
- 3.) Fill the entire buffer with natural vegetation – which would have a very significant impact on the site plan.

He advised the Conservation Commission to be as specific as possible in their recommendations to the Planning Board in terms of what they are trying to achieve, not necessarily in *how* it should be achieved.

After three hours of discussion -- including how best to proceed with a recommendation to the Planning Board -- Mr. Taintor offered to work with Ms. Needell on a “menu” of recommendations or statements, based on what he heard tonight. The Commission will review that document at its meeting on December 28, 2020.

Mr. Rous MOVED to adjourn the meeting at 10:03 pm; SECONDED by Ms. Krebs, APPROVED unanimously, 7-0, Motion carries.

Respectfully submitted,
Lucie Bryar, Minute Taker
Durham Conservation Commission

Note: These written minutes are intended as a general summary of the meeting. For more complete information, please refer to the DCAT22 On Demand videotape of the entire proceedings on the town of Durham website.