

These minutes were approved at the September 19, 2022 meeting.

DURHAM CONSERVATION COMMISSION SPECIAL MEETING
Monday, August 8, 2022
DURHAM TOWN HALL, COUNCIL CHAMBERS
5:00 p.m.

MEMBERS PRESENT: Jake Kritzer (Chair), John Nachilly (Vice Chair), James Bubar (Planning Board Rep), Erin Hardie Hale, Neil Slepian, Carden Welsh (Town Council Rep)

MEMBERS ABSENT: Roanne Robbins

ALSO PRESENT: Town Planner Michael Behrendt and Minute Taker Lucie Bryar

I. Call to Order

Chair Kritzer called the meeting to order at 5:02 p.m.

II. Roll Call

Roll call attendance was taken.

III. Approval of Agenda

The Chair said the Commission received a request from Town Engineer April Talon to issue a letter of support for a funding proposal for dam removal. This will be discussed under Other Business.

He explained this special meeting came about because a number of members of the public reached out to the Commission asking if they would weigh in on the Main St. Parking Lot proposal. Since the Commission might not have a quorum next month and time is tight on the project, a special meeting was called.

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

IV. 19-21 Main Street – Parking Lot. Opportunity to comment on proposed site plan application for parking lot expansion. The project is now before the Planning Board.

Toomerfs, LLC C/O Pete Murphy and Tim Murphy, owners. Mike Sievert, engineer. Robbi Woodburn, Landscape Architect. Monica Keiser and Tim Phoenix, attorneys. Map 108, Lots 10, 11, 12 and 13. Church Hill District.

Mr. Slepian had announced earlier that he is recusing himself from this item since his son works for engineer Mike Sievert of Horizons Engineering and drafted the site plans.

The Chair said 10 minutes will be allowed for the applicant to give some background; Commission members may ask questions and then public comment will be invited.

He clarified the project doesn't fall within the WCOD or SPOD, therefore isn't subject to review by the Commission. However, the Commission does have the option to weigh in on any environmental matters before the Town. Comments will be submitted to the Planning Board, based on tonight's discussion.

Attorney Monica Keiser came forward. She said site plan regulations permit the Conservation Commission to weigh in if the Planning Board asks them to do so. She doesn't believe this has occurred and expressed her concern that the Commission should not be acting on public request. She believes the Commission is acting beyond their mandate. The applicant does see this, however, as an opportunity to correct some inaccuracies about the project.

She noted a soil analysis was done by Soil Scientist Joe Noel; the Land Surveyor was Randy Tetreault and the Wetland Scientist was Mark West.

Mr. West came forward and said he originally flagged the wetlands in 2018 and by the rules, needs to verify the wetlands are still in the same location. Upon re-examining them, he found them substantially unchanged – except for two downed trees. He consulted with Soil Scientist Joe Noel who concurred the wetlands are flagged appropriately.

Wetland 439A is approximately 3,000 square feet and is non-jurisdictional, i.e., not entitled to a 75-foot buffer. Wetland 934B is an off-site wetlands on the other side of a stone wall. He observed two fallen trees there. Wetland 439A is classified as poorly drained and 934B is “somewhat poorly drained.”

Mr. Bubar asked where 439A drains and Mr. West said it's an isolated depression. There's not enough water to form a channel and everything on that slope drains down off the site. Mr. Bubar wanted to know if it then becomes groundwater and eventually ends up in College Brook and Mr. West replied, “Most likely.”

Brief Overview by Project Engineer

Mr. Sievert came forward to briefly explain the project. The proposal is to re-construct an entrance area that already exists. He showed site plans with five existing buildings. One building will be removed and existing parking will be re-configured. The parking spaces at the front of the lot will be removed.

He said the project has been in front of the Planning Board for several years and has been scaled back since its initial inception. Plans now call for a parking lot at 5% grade. There is a two-to-one slope that goes down to a retaining wall, which will catch the grade before it goes into the buffer.

In answer to a question, Mr. Sievert said a 2-to-1 slope means for every two-feet of horizontal surface, there's a one-foot vertical drop. It's a steep slope. He said there's no wetlands impact.

Commission members asked questions about the height of the retaining wall (four feet and less in spots); and what the graded area will look like. Mr. Sievert said it will be a fully loamed and planted slope. There's a landscaping plan which now calls for all native plants.

Mr. Sievert said there will be a robust drainage system and he described the components and how they will work. He said the end result will be reduced flow to College Brook compared with what is happening today.

There were additional questions from the Commission about the cement chambers, 100-year storms, and the expected lifespan of the drainage system.

Mr. Welsh asked if there will charging stations for electric vehicles and Mr. Sievert indicated there will be underground conduit available to add up to three stations later. Mr. Welsh questioned if this number is adequate with 150 parking spaces.

Discussion turned to snow and ice removal. Mr. Sievert showed four snow storage spots on the site plan. If it exceeds the allowed height, snow will be trucked off site. The maintenance company will be Sno-Pro certified.

Mr. Bubar noted any snow left on site will melt and runoff. Chair Kritzer asked if all runoff will make its way to the drainage system and Mr. Sievert replied three of the snow storage sites will go to the drainage system and most of the fourth site will as well.

Mr. Sievert added that a sewer line will be replaced since it's broken and inadequate.

Public Comments (summarized)

Joshua Meyrowitz, 7 Chesley Drive: said it's still unknown what the parking lot will look like from the Anderson property. He challenges the notion it won't be in the WCOD. The property is very close to Chesley Marsh and the retaining wall is extremely close to the wetland setback. He believes the retaining wall will be built 77 feet from the marsh and questions how a wall will be built there without disturbance.

He emphasized this is not a "by right" property and believes it violates two conditional use criteria. In his view, comments by the Planning Board do not reflect the full impact of the proposal. He disputes the claim the parking lot will bring improvements to College Brook.

Mr. Meyrowitz said the 2015 Master Plan calls for a stop to the loss of forest land. He questioned why ORLAC [the Oyster River Committee] is not involved and believes they haven't been informed about any revised plans.

Town Planner Michael Behrendt responded the Oyster River group has been informed as required.

Vice-Chair Nachilly asked for clarification on the height of the retaining wall and Mr. Sievert corrected earlier information and said it's six feet at the highest point.

Robin Mower, Britain Lane: said the soil mix to be used as a filter media should be chosen in keeping with research by the UNH Stormwater Center. She does not believe the Planning Board has paid adequate attention to removing excess nitrogen. Nothing would remove nitrogen to the degree the wooded area does today. UNH Professor Dr. Wollheim noted a typical forest retains 90 to 95% nitrogen. In her view, there could be a big increase of nitrogen to the Oyster River just from that small patch of forest. She said the Conservation Commission could advise the Planning Board as a condition of formal approval to require the soil mix be chosen according to standards of the UNH Stormwater Center. She believes the project is completely out of scale.

Mr. Bubar asked about the source of nitrogen and Ms. Mower said while not a major contributor, roads and parking lots can flush nitrogen into water bodies. Nitrogen is also in vehicle exhaust.

Malcolm Sandler, Langley Road: said projects such as this are not permitted by right on this site. He urged the Commission to ask if the Town would be better off with this proposal if it wasn't accepted. It involves a substantial forested area, which provides drainage and heat management.

Deborah Hirsch Mayer, 19 Garden Lane: thanked the Commission for holding the hearing and said she does not believe the project meets conditional use. She's extremely concerned about the loss of wooded land.

The Chair asked Vice-Chair Nachilly to weigh in since he needed to leave the meeting. Mr. Nachilly said he advocates for fewer cars and more electric vehicle charging stations. The proposed site is a beautiful wooded lot and he believes other uses would be more attractive. While the engineering for the project is excellent, he questions the Town values in permitting something like this. A lot of problems with College Brook come from the Town's own infrastructure and runoff from the Mill Plaza parking lot.

Clarifications from Project Engineer

Mr. Sievert addressed Mr. Meyrowitz's concern about how a retaining wall can be built without disturbance to the wetland buffer. He said the wall is precast block that doesn't need a footing. He added that conditional use is needed because spaces are being rented to people who don't reside there.

Addressing Ms. Mower's comments, he said the nitrogen system hasn't been designed yet and will be done following the UNH Stormwater Center standards. Part of the nitrogen issue is due to a missing top to a pipe on the sewer system.

The Chair turned discussion back to Commission members to reach a consensus on comments to submit to the Planning Board.

Mr. Welsh said the Commission's mandate is to protect natural resources. This project has negative environmental impacts. Urban forest will be lost and there will be more vehicle congestion. UNH has a goal to reduce carbon emissions by reducing the use of private vehicles. The project, in his view, is inconsistent with the Town's Master Plan and Town goals.

He suggested the Conservation Commission send comments to the Planning Board that this is a negative for natural resources but also make suggestions for improvements should it go forward.

Ms. Hale agreed with Mr. Welsh. In her view, some of the Town's zoning and regulations are not keeping up with the vision set up in the Master Plan. UNH has a specific plan to discourage parking downtown and this project goes against that.

Mr. Bubar said he will refrain from further comment since he's reviewing and voting on the project as a member of the Planning Board.

There were procedural questions about how to draft a statement to the Planning Board without having discussion take place outside of the public meeting. It was agreed the Chair will draft and circulate a statement via email through Mr. Behrendt. Only non-substantive changes will be made, i.e., corrections and clarifications. Mr. Behrendt said this complies with 91A.

Chair Kritzer summarized key points:

- The Conservation Commission recognizes it's not in their purview to support or oppose the project due to a complex set of factors, both environmental and non-environmental.
- The Commission acknowledges there are positive environmental aspects of the plan, including a robust stormwater management plan and replacement of a sewer line.
- However, the Commission believes there are significant environmental impacts, given the scope, scale and location of the project.
- If the project goes forward (which the Commission does not endorse), it's recommended that the Planning Board carefully consider using the right materials to reduce nitrogen inputs; ensure there's a native planting plan and that snow removal is carefully considered.

Ms. Hale MOVED that Chair Kritzer draft a letter (incorporating points above) to be sent to the Planning Board prior to their Wednesday meeting; SECONDED by Mr. Welsh, APPROVED, 3-0-1, with Mr. Bubar abstaining. Voting Yea: Chair Kritzer, Mr. Welsh and Ms. Hale.

V. Solar Energy Systems Ordinance. Opportunity to comment on proposed amendment to the Zoning Ordinance. The draft addresses numerous aspects of solar energy systems including rules and allowed locations for systems that are accessory to single family houses, systems accessory to multifamily and non-residential uses, small and large utility-scale systems and group net metering host systems.

Note: Mr. Slepian re-joined the meeting.

Mr. Behrendt said Councilor Jim Lawson did a lot of work on amending the ordinance and he is here to speak with the Commission tonight.

Mr. Lawson gave some background on the ordinance. He noted it was drafted by the Planning Board in 2019 and moved to Town Council, which chose not to do a first reading. The Council wanted to do additional work on the ordinance.

Some of the revisions were substantial, particularly as they relate to the SPOD and WCOD. The ordinance as drafted allows freestanding solar systems to be installed in the WCOD and SPOD as a conditional use.

Mr. Lawson said he believes freestanding solar would be an intensive use in these districts. There's an extensive installation process, including trenching and then maintenance. Revisions to the ordinance now allow far more options for residents to place solar. He does not believe solar systems should be allowed in the WCOD or SPOD. Solar that is roof-mounted is allowed as a permitted use.

Mr. Welsh asked why this change was being considered now and Mr. Lawson said solar was allowed in those districts in earlier versions of the ordinance and just carried through subsequent revisions. Upon studying it further, he does not see enough benefit vs. impact to the districts.

Mr. Lawson noted the ordinance as proposed now allows residents to work with each other to do net metering on a reasonable scale.

Mr. Slepian asked for clarification on how free-standing systems would be allowed in relation to buffers. Mr. Behrendt said the buffers apply within three categories: Allowed by Right; Allowed with Comment and Conditional Use. There's no differentiation for solar systems. Setbacks depend on the type of wetland stream and which zone it's in.

Mr. Lawson said there's only been one conditional use application for solar in front of the Planning Board. He sees the ordinance as a living document, subject to change if needed.

Ms. Hale commented that the ordinance restricts solar that is visible from a public road. This seems to be about aesthetics. She thinks residents should all be proud of solar use.

Mr. Lawson said in some areas, large-scale utility solar is being placed in forests that are being clear-cut instead of on re-purposed land.

In answer to a question, Mr. Lawson said Town Council can't make the proposed modification to the Ordinance (to disallow solar in the WCOD and SPOD). A recommendation would need to come from the Planning Board or the Conservation Commission.

Mr. Welsh MOVED that the Conservation Commission agrees with the recommendation to remove the option of placing solar systems in the WCOD and SPOD (motion amended below); SECONDED by Ms. Hale, APPROVED unanimously, 5-0, Motion carries.

Chair Kritzer said he would like to make a friendly amendment to say the Commission recognizes it's excluding an activity with environmental benefit [in those districts] and they may want to re-evaluate it over time if it proves to be too restrictive for those wanting solar.

VI. 2023 Budget. Proposed 2023 Budget for the Conservation Commission.

By consensus, members agreed to submit the same budget as last year.

VII. Other Business

By consensus, members agreed the Chair could draft a letter for April Talon in support of a funding request for removal of the dam.

VIII. Adjournment

With no further business, Mr. Bubar MOVED to adjourn at 6:52 p.m.; SECONDED by Ms. Hale; APPROVED unanimously, 5-0, Motion carries.

Respectfully submitted,
Lucie Bryar, Minute Taker
Durham Conservation Commission

Note: These written minutes are intended only 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.