

Verbatim Transcript of the Durham Planning Board's Initial Deliberations on the Durham Conservation Commission's Recommendation Regarding Wetland Setbacks at Mill Plaza, January 27, 2021

Jan 4 2021: [Conservation Commission's Recommendation to the PB](#)

Please also read this previously posted Citizen Comment:

"TEN Planning Board Confusions on Jan 27, 2021 over ConCom Recommendation During a 'Public Hearing' with Stifled Public Input," [Joshua Meyrowitz 2-23-21](#) (4 pp)

CONSERVATION COMMISSION Deliberations on [Mill Plaza's CUP Application](#)

(The Mill Plaza is owned by NYC-based Colonial Durham Associates, aka CDA)

- 1) Oct 26 2020 ([agenda](#), [video](#), [minutes](#), [public comments](#)¹)
- 2) Nov 20 2020 Site Walk ([minutes](#), public comment link above)
- 3) Nov 23 2020 ([agenda](#), [video](#), [minutes](#), public comments link above)
- 4) Dec 09 2020, special meeting on Plaza ([agenda](#), [video](#), [mins](#), public comments link above)
[Dec 28 2020 (Mill Plaza was last on [agenda](#) but not discussed, [video](#), [minutes](#))]
- 5) Jan 4 2021, special meeting on Plaza ([agenda](#), [video](#), [mins](#), public comments link above)

Wetland Setbacks requirements are in the Zoning chapter: [Article XIII, Wetland Conservation Overlay District](#). See also: [Article VIII, Variances & Special Exceptions](#).

The Dec 2015 [Legal Settlement](#) indicates, in section 1d: "The Revised Application will provide for **proposed buildings and vehicular roads outside of the shoreland and wetland buffers such that variances from town ordinances are not required and the buffers are maintained by the property owner.**" And in section 1f: "The Revised Application will have **increased natural buffer along the southern property line adjacent to the College Brook;** such buffer to be maintained by the property owner in perpetuity." [emphasis added]

Moreover, the [diagram](#) (p. 5) accompanying the Settlement shows only the site entrance in the wetland setbacks. What appears to be the rest of the WCOD on the diagram is in green. (A full transcript of the Town Attorney explaining the Settlement to the Planning Board and public on January 27, 2016 can be read [here](#).)

¹ Despite requests from citizens, the Citizen Comments to the Conservation Commission on the Mill Plaza were not posted separately from the hundreds of Citizen Comments to the Planning Board on Mill Plaza, making the comments directed specifically to the Conservation Commission more challenging to find and review.

Overview of January 27, 2021 PB Public Hearing on ConCom Recommendation

Although the essence of Conservation Commission's recommendation was summarized accurately by Planning Board (PB) member James Bubar (the only member of the ConCom to vote against the recommendation), none of the *reasoning* for the recommendation was presented or discussed on January 27. Moreover, Mr. Bubar used the "they," rather than "we," to describe the Commission's recommendation.

No members of the Conservation Commission who voted for the recommendation participated in the PB hearing. The applicant, CDA, was allowed to argue strongly against enforcement of the wetland setback, and even to state CDA's strong intent *not* to follow the ConCom recommendation. No PB member expressed a clear challenge to that refusal. Moreover, the Zoomed-in public was denied the right to speak until long after the Board members articulated their views. (Engaging in deliberations prior to public input at a Public Hearing – particularly when the applicant is allowed to interrupt and influence those deliberations – appears to be a clear violation of Planning Board Public Hearing rules.²)

The applicant repeatedly emphasized a planned reduction in impervious areas in the buffer, and there was no mention of the expected net *increase* in impervious area on the site overall (with the planned blasting away of the 1.1-acre thickly vegetated hillside between current Building Two and Main Street housing). Moreover, other key distinctions were lost during the meeting: 1) The distinction between an area that would be protected by grandfathering and one that is not; 2) the difference between the Conditional Use criterion of not having an alternative location for a general type of *use* and not having an alternative location for a particular *design* that might be purposely oversized for the site (a self-imposed hardship); and 3) the difference between using parking islands not along the Brook to increase pervious areas and an enhanced "natural buffer" *along the Brook*, as stipulated in the 2015 Legal Settlement and the Conservation Commission's recommendation.

There was no mention on January 27 of the resident-reported increase in College Brook flooding following the Plaza's 2002 illegal bulldozing of the eastern hillside and how the restored buffer recommendations of the Conservation Commission were intended, in part, to address the flooding. (See also the posted: "**College Brook Degradation & Flooding: 20 Years of Mill Plaza Violations & Deceptions,**" [Joshua Meyrowitz 1-4-22.](#))

A CDA consultant, Dr. Tom Ballestero, was invited to interrupt the discussion of the

² See pp. 109-110 of the [NH Planning Board Handbook](#) and Durham's own [PB Public Hearing rules](#). The public is to be heard *before* deliberations.

Conservation Commission's recommendations with a presentation on his plan for Brook restoration (a very worthy enterprise, but one largely irrelevant to, and functionally distracting from, the ConCom recommendations, particularly as not all elements of the Ballestero plan were to be followed by CDA). Also, the proposed stormwater system was presented by CDA – and seemingly accepted by some PB members – as if it were a *substitute* for adhering to the setbacks required by the Zoning ordinance and recommended by the Conservation Commission. A sophisticated stormwater system, though very welcome, is, in fact, something simply *required* by the site-plan regulations for a redeveloped site.

When members of the public (who were still awake) were finally able to speak after 11pm and comment on the violation of Public Hearing procedures, Acting Chair Lorne Parnell argued that nothing had been decided with respect to the ConCom recommendation. And although it is true that no formal *vote* was taken, the transcript below documents that Board members expressed strong views in opposition to the ConCom recommendations and in seeming support of CDA's refusal to adhere to the setbacks, with no opportunity for members of the public (nor non-present members of the Conservation Commission) to respond. And those positions have endured. (See note at end of transcript.)

Colonial Durham Associates (CDA) clearly reacted with relief during the meeting, as if they would, based on PB input, not need to pay attention to the ConCom recommendation, and could merely respond to minor requests, such as for more details on planned plantings. Additionally, CDA offered a \$25,000 "contribution" toward Brook restoration that was described in a triumphant manner by CDA Attorney Ari Pollack, as if that "generosity" was sealing the deal of the PB ignoring the ConCom recommendation. A close review of the transcript below would serve to test the accuracy of this overview.

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VERBATIM TRANSCRIPT OF PORTION OF 1/27/21 PB MEETING

PB Public Hearing on Mill Plaza (& other applications)

([agenda](#), [Plaza Planner's Review 1-27-21](#), [video](#), [public comments](#), [minutes](#))

MEMBERS PRESENT: Lorne Parnell, Vice Chair (in person); Richard Kelley, Secretary (remotely); Bill McGowan (remotely); James Bubar (remotely); Barbara Dill (remotely); Mike Lambert, alternate (remotely); Heather Grant, alternate (remotely); Guy Johnson, alternate (in person); Raymond Philpot, alternate (remotely); Sally Tobias, Council Representative to the Planning Board (in person). MEMBERS ABSENT: Paul Rasmussen, Chair; Jim Lawson, Alternate Council Representative to the Planning Board. PLANNER: Contract Planner Rick Taintor participated remotely.

TIME CUES: Meetings start around 7pm. (This one started at 7:03) The clock time center screen is easy to read on the video, but it's not always displayed, so some of the timing cues are to hours & minutes into the meeting (at bottom right of screen). In some spots, both time cues are listed. [Video Link](#).

9:25:13 / 2:22:17

Rick Taintor: Attorney Pollack didn't mention the Conservation Commission's recommendation, which the Board really has to consider tonight. Not to take any action on, but at least Board members should be able to give the applicant a sense of how they feel with respect to those recommendations, because they could significantly affect the reality of [echo breakup of sound]. I would hate to have you get to the end of the process and not have indicated that you might not approve that Conditional Use Permit. As it has two conditions related to the environmental resources. So, in addition to the discussion of the College Brook and any commitments that Colonial Durham might make to make improvements, or enhancements, I think the Board needs to spend some time reviewing the Conservation Commission recommendations and discussing how they react to them.

Lorne Parnell: I wonder if I could ask James, you're the representative on the Conservation Commission. I wonder if you could just give us a quick review as to what the Commission discussed and *why* they came to the conclusions they did.

9:26:49

James Bubar: Well, you can ask. Um, it was a long time ago [Jan 4]. There was much discussion about invasives and the quality of the stream, but in the end, what was in the *motion* was the restoration of the full 75-foot buffer. And, with the exception of the roadway entrance, *deep* enough through the wetland buffer to allow tractor-trailers to drive in and safely turn *out* of buffer, uh the roadway was out of the buffer – in *their* mind. And they were very adamant about protecting, well, not really protecting, as much as *restoring* the buffer, because obviously there is no buffer there today, mostly, there may be 5 feet. So I don't know if that really answers the question.

9:28:04 / 2:25:07

Lorne Parnell: No, that's fine. I've read the report. I just thought there might be some issues that were, would be of interest to the Planning Board, but

James Bubar: Yes, I think the *whole thing* was of interest to Planning Board, and they were really pretty determined that the buffer should be restored.

Lorne Parnell: I wonder, Joe, is it possible to get a plan that shows how much incursion we

have in the buffer? So we know what we are talking about?

Joe Persechino: Absolutely. Joe Persechino, Tighe & Bond, for the record. Can I turn this monitor on back here, so that when I present I can see what I'm presenting?

Sally Tobias: You should be able to.... [more technical suggestions from several people]

9:29:27

Ari Pollack: You're [Joe] bringing up the buffer-coverage plan? So while he's getting up and running, I guess it would be helpful to summarize our, the applicant's, position on the issue of buffers. It's been consistent throughout the discussion, but to bring it forward, as he's bringing up that graphic: Encroachment into the buffer is the existing condition.³ There are roads and parking aisles there today, including the entrance to the site. And this is with respect to the wetland buffer, of 75 feet.

It's our position that the requirements, and certainly the expectation would be that we would *improve* upon the existing condition. And that any requirement to *eradicate* occupation of the buffer is just unreasonable and would really provide, it would require a complete redesign of the work that we've been doing to this point. And what Joe will be able to show you is that we *are* making reductions in the impervious coverage both for the Shoreland and significantly more for the Wetland buffer.

And a lot this played into the landscaping discussion that we had relative to parking islands and trying to create areas of pervious coverage within those parking islands. Um, I guess the overall comment would be: Every time you try to push in one direction or the other, there is a consequence in another part of the plan. And, obviously, we did our best to maximize pervious areas and landscaped areas in the parking field and therefore that has a consequence of spreading the site downward toward the Brook and made our, you know, it limited our ability to do additional restoration. But we've made our choices, and we've tried to balance things as best as we can. And I'll let Joe explain that graphic.

³ Per Contract Planner, Rick Taintor, what is proposed by CDA is not an exempted or grandfathered "existing" condition. See [Taintor Email 10-23-20](#) to the Conservation Commission: "**I don't believe that *any* of the proposed redevelopment within the wetland buffer, including the parking lot, is exempt from compliance with the zoning**, because (a) new underground utilities and infrastructure are proposed in existing paved areas, and (b) there will be extensive changes in grade throughout – some areas within the wetland buffer are proposed to be raised or lowered by up to at least 3 feet in elevation. As a result, **all the items listed on pages 2 and 3 of my report require conditional use approval.**" (emphases & link added) See more from Taintor on lack of grandfathering [here](#), pp. 2-6. And for related case law, see [Letter from Attorney Mark Puffer 8-24-21](#).

2:28:27

Joe Persechino: Sure. Just, this is simply, to your question, Mr. Chair, the top image is the existing condition, as they exist today on site [shows diagram]. So, there's the entrance over here. There's the parking that exists within that 75' wetland buffer, which is this black dash line back here. And then there's the Shoreland buffer which is the 25' offset, which is that also black dashed line, but smaller dashes. So you can see that there is the parking, there's actually a corner of the existing building [Bldg 2] in the 75' buffer, and, you know, the path that goes to Chesley Drive. So that's the existing conditions.⁴

The *proposed* condition is what is shown below, and that restores a portion of the site along the Brook, and within that 75' wetland buffer, to pervious condition and that totals, between the land that is directly adjacent to the Brook and the areas of removal to approximately just less than 13,000 sf, so a little more than a quarter of an acre there of restoration to pervious versus impervious. And, again, the shoreland buffer's much closer so there just a nominal improvement there of 250 or so square feet of additional pervious surfaces in *that* buffer. Again, that's throughout the length of College Brook.

2:30:10

Sally Tobias: Could you show the existing conditions a little more so I can see them more.

Joe Persechino: Sure. So you can see that this is large swath of, you know, impervious untreated, stormwater runoff comes from this area, and then there's the parking area here. So, removal of this area, you know, to greenspace and then, um, additional landscaped islands along the, through the parking area as additional greenspace. We're adding a rain garden, bio-retention basin, to just north of the entrance there. So, again, that's what's being proposed as impervious area reduction or a pervious area increase. Though, other components there being, introduced as part of the project, include a fully engineered stormwater system, which provides the benefits of treating the stormwater that's not being treated today, the runoff from the Mill Plaza, as well as what Professor Ballestero is here to discuss, further recommendations for what *could be* done in College Brook, or *along* the Brook, many of which were already incorporated into the project design. We can point those out as we go, as well as additional improvements that could happen within the College Brook itself, or along the adjacent areas of College Brook.

Now, as you can see on this plan, College Brook, the majority of College Brook, I should say, obviously is not on the Mill Plaza property, and even where it's adjacent to Mill Plaza, it goes on

⁴ Parking in the wetland buffer (a clear violation of Durham Wetland Zoning) was subsequently removed, with some parking spots being moved to behind proposed Building B, pulling that building 25 feet closer to College Brook and the Faculty Neighborhood. The most recent site plans are posted here: [Updated Site Plan 12-1-21](#).

and off the property. So, you have the entrance to College Brook coming from Mill Road either with a 6' or 72" culvert that runs for a couple of hundred feet from across Quad Way through the Campus Crossing parking lot, which used to be called Mill Road Visitor Center Lot, and it empties right here, and then it goes, meanders through again the adjacent properties and then back off, back on to the Mill Plaza property, off again, and then down through the Chesley Road properties, and behind them, down into Mill Pond, eventually Great Bay, and the ocean. That's what's being proposed as a package of improvement to both the stormwater runoff, to the vegetated buffers itself, so, and further recommendations and potential improvement that could be done with a stakeholder group that would include off-site partners.

2:33:04

Lorne Parnell: Okay. Any comments [on Conservation Commission recommendation] from Board members?

9:36:09

Sally Tobias: Um, I'll comment real quick. Um, I watched, I did watch the Conservation Commission meeting [which of the five?] today. Um, and I have to admit, with all due respect, I often felt they were getting a little bit off the task of the impact of that area. I think that going into a restoration, and I think some of the members even spoke to it, some of the members suggested that going to *expect* this where we haven't made that same expectation to others seemed tough. Um, but I think there are definitely impacts on the *other* side of the brook as well, and I think we would be hard pressed to, myself, to justify that much of a removal of a *present* condition that is already existing. I personally feel that the stormwater management that's being added into this plan is fixing, is making an improvement on what is already there. Um, so that is my opinion on the Conservation Commission's determination. And, actually, I don't know, would they be wanting to remove the entire road?

9:37:40

Heather Grant: I think it was pretty clear, this is Heather, that, and I was about to ask question is that, you know, the ability to obviously have delivery trucks coming in and out still had to occur. So if we know that there's the necessary activities of the businesses moving the semis in and out. So, if you go then, what, if you have to have that support, what's left that's within the buffers? And when you look at that area, what would that mean in terms of impact to bring that back, as respect to the buffers? Because it wouldn't include obviously the entrance and the necessary transport in and out. So that's a question, I think is. So, they nodded to that, what's left? And what would have to change within the project to respect it if that's what they were trying to do is get them to think about what would that mean to the design.

9:38:53

Sally Tobias: Their determination would be that there is another option for the design of the, there is another *location* for what is there [existing or proposed?] on the site, so that would have to be shown. I don't know where else they would put *that*, unless they changed the design completely.⁵

9:39:20

Ari Pollack: So just reading from the Conservation Commission recommendation page, with the exception of the curb cut that provides the entrance to the property and a minimum distance needed to safely turn away from the wetlands, it's their recommendation that the entirety of the buffer be restored. Obviously, it's our position that we are making an improvement both in terms of the square footage of coverage and the treatment of stormwater and, I shouldn't forget, the stream-enhancement discussion we're about to have and the contribution there as well.

9:40:00

James Bubar: It was not the Conservation Commission's responsibility to re-design or re-engineer the site. So they simply dealt with the wetland, shoreland issues. In addition to the curb cut they did the other end down by the Chesley Drive and path, where they acknowledge that, yes, there's going to be a gravel wetland pit down there and that that, ultimately, is part of the wetland.

Richard Kelley: Yes, Mr. Chairman, I guess I'd like to hear Professor Ballestero's presentation

⁵ The point of the "no alternative location" CUP criterion is not that you can propose a McMansion on a small house lot and say that there's no place else to put *that* McMansion other than in the wetland setback. You could have a similar *use*, such as a smaller residence better scaled to the site. The same general issue arose in the [8 Mathes Terrace & 15 Madbury Road Project](#) that the current Conservation Commission explicitly used as a precedent: "The Durham Conservation Commission is concerned that the project construction will occur within the Wetland setback area. Protection of this area and nearby Pettee Brook is important. ...[I]n regards to Standard 1, an alternative location outside of the wetland setback area is feasible when the size of the building is reduced. **We do not recommend granting a CUP....** Our main concern....is that...the proposal did not meet Standard 1 – "There is no alternative location on the parcel that is outside of the SPO District that is feasible for the proposed use." [NOT for the same exact over-sized design, but for a similar "use."] [Emphasis added]

"An alternative location outside of the wetland setback area would be feasible if the project was designed differently, and the scale of the building was reduced. There did not seem to be any practical reason that the construction needed to extend into the buffer area other than the developers were trying to make the building capacity as large as possible.... An alternative location outside of the wetland setback area would be feasible with a smaller building design..."

In other words, the applicants in the Mathes case (and now, Mill Plaza) created their own hardship by proposing a design oversized for the site, intentionally designing structures that would infringe deeply on the wetland setback, when smaller structures, for the same *use* could respect the setbacks.

prior to rendering any sort of judgment or offering my opinion on the matter.

9:40:59

Lorne Parnell: I would agree with that. I happened to be, have some time in Durham yesterday I think it was, and I took a walk along Mill Road to Chesley Drive along this edge of the Brook, edge of the parking lot, which is the edge of the Brook. And the area between the parking lot and the Brook is, in my opinion, an ecological *disaster*. It's just terrible. The trees are all dead, the snow is being piled up there. And so I would be *very* interested, since it's the same owners, who are going to be continuing on here, in what is being proposed between the edge of the asphalt, where they're showing a pathway there, and the Brook. What's going to be done to try to restore that area to some sort of balance or some sort of pristine situation? I think it's a tremendous opportunity to have something in Town that where you're walking along through that area, along a Brook. But, to do it now, it's just awful. So I'd be very interested before we decide on this other issue, I'd be very interested in hearing what is being proposed.

9:42:30

Joe Persechino: Sure, at this point, I think Professor Ballestero may want to go through his recommendation. [Elaborates] Some were incorporated into the design. Town on snow storage. Condition of approval to deal with Brook concern.

9:43:06 – Prof. Tom Ballestero gives a 25-min presentation based on this document:
[Recommendations for Stream Improvements to College Brook 5-25-20 \(Received 10-29-20\)](#)

10:08:53 / 3:06:56

Heather Grant: So if the focus of the Conservation committee was to try and improve the setbacks, what line would we be looking at that would need to have give? I mean obviously you guys are saying that means something gets squished somewhere else. But, in general, if we're saying that the commitment was that we were going to make this property into a property that respected those lines, at least not obviously the roadway, got to get in and out of what's obviously a shopping center, but what is in that corner, or that area, that would then end up needing to be changed, what changes would be driven by that Conservation's committee's recommendations? What would we be looking at?

10:09:43

Joe Persechino: We try not to delve too deep into hypotheticals, because we're not proposing to do that. But the recommendation was essentially, and I'm paraphrasing here, the entrance is acceptable to be within the 75' buffer. This outside line is the 75' buffer [shows on diagram]. Beyond that, it was restore the buffer to, you know, pre-shopping center pervious vegetative buffer. So that would entail removing something along the lines of this entire area from the

buffer. Which, again, we're not proposing anything *closer* to the buffer than what exists today. I suppose if we are looking to add incremental *more* green space as part of the imposed condition, one of the things that could be considered in that and is a perfect example of what we are trying to do here, is balance proposed improvements with adding back some vegetative buffer. So, the closest thing to the buffer, excuse me, the closest thing to the Brook within the buffer, is the sidewalk that goes down to, or walkway that goes down to Chesley Drive and then runs adjacent to the parking access rise. If the intent is to limit the amount of impervious area, I think this sidewalk, although pedestrian connectivity and access has been a Planning Board goal for this project from the outset, perhaps this one could be looked at as redundant and removed. Is it necessary to have an impervious connection into Chesley Drive? Perhaps not. Perhaps that could also be removed. This could, again, take that impervious area closest to the Brook and remove it from the project. *[Discussion of impervious or pervious path]*

3:20:22

Lorne Parnell: I wonder if we could try to move this along a little bit. Um. I think we've heard what the Conservation Commission is suggesting, recommending, I should say. And, uh, obviously, what the applicant is proposing is not *that*. So I guess we have to decide, is this going to be an issue or is not going to be an issue. And, uh, maybe we could get through that this evening without coming to some definitive answer. But to give some indication, at least. And I'll go out first, and I think that the way I see it, I think I am, um, I think that the proposal by the applicant is more or less acceptable to me the way they've shown it, except that I would be very concerned about what they're proposing in terms of what is shown as green on that map. What's there now, as I said before, is not a very good looking spot. The trees that are there are all dead. And we've just heard about the invasive species. So I think that whole area has to be improved, a lot! And I'll be very interested in what is proposed for that. And I think a restoration of that area will do more for the environment of the area of the College Brook than simply removing the asphalt and putting in grass, or something that's not impervious. Anyway, I don't what other people thought, but those are my thoughts.

10:25:09 / 3:22:16

Sally Tobias: I would add that I agree. There are a lot possibilities along that green. Looking at the picture and we see green and we think that what is there will be lovely green. But what is there now is kind of like crappy green, ish. Kinda, you know. So, obviously, that's not acceptable. I think there's a lot of opportunity in there to really provide a sense of place in that area.

10:25:40 / 3:22:44

Richard Kelley: Is it my turn? So, I think the applicant has made efforts to improve the situation that exists today. And, I'm looking at their plan, this is the comparison plan, Joe. And it looks like

a 25% reduction of impervious area when we look at those, the tan color, and those two elements, or compare the numbers in the chart, table. So, the reduction of the impervious area within the setback goes a long way with me, and the fact that it's an existing condition out there today that exists within the buffer is also something to consider.⁶

10:26:47

Lorne Parnell: Anybody else?

10:26:49

[Resident] Joshua Meyrowitz: What happened to the Public Hearing?

Lorne Parnell: We didn't get there yet.

Sally Tobias: We didn't get there yet.

10:26:55 / 3:23:59

Joshua Meyrowitz: But you're making decisions without any public input, but applicant input.

10:27:01

Lorne Parnell: We hear voices here?

⁶ Note that as Contract Planner Rick Taintor explained orally to the Conservation Commission (and in emails to inquiring citizens), the CDA site plan has *no* "increased natural buffer" as is required under the 2015 Legal Settlement and as is stipulated in the Conservation Commission's recommendation to the Planning Board. Rather, as Taintor explains: "The 25% figure refers to the reduction in impervious area within the 75-foot buffer (CDA table from sheet C-701). This 12,813 sf increase in pervious area is an improvement over existing conditions, but it is not the same thing as an increase in 'natural buffer.' The new pervious areas consist of parking lot islands and the gravel wetland." Taintor adds:

"In the discussion of Mill Plaza, the word 'buffer' is being used in two ways with different meanings.

- The settlement agreement calls for the revised plan to 'have increased natural buffer along the southern property line adjacent to the College Brook.' That implies that the 'buffer' is both vegetated and contiguous to the brook. (The site plan attached to the settlement agreement actually shows such a condition.)
- On the other hand, the zoning ordinance defines 75-foot 'buffers' from the edge of the wetland and the edge of the brook, but allows uses such as accessways and accessory structures within those buffer areas by conditional use permit—that is, the regulatory 'buffers' do not need to be entirely 'natural' or pervious if the Planning Board approves. These buffers are defined by setbacks from the resource areas and not by their condition or function.

It is understandable that these two uses of the term have resulted in some confusion. I think it is reasonable to interpret the phrase 'natural buffer' as a description of the condition of an area adjacent to the brook, as opposed to the two regulatory 'buffers' defined by the ordinance."

Sally Tobias: We have to work, too.

Lorne Parnell: Any other comments? James?

10:27:30

James Bubar: I agree with you, Lorne. I would really like to see the planting schedule, or plan, whatever you would like to call it, to understand what all that nice green color is *really* going to be. I would also like to see, and I know John Hart is still out there tonight, and he's the President of Brookside Commons. I would really kinda like to understand what the whole restoration plan is. And I would certainly probably be the first to say it can't only be one landowner doing their piece of their side of the stream. Invasives aren't that respectful; they'll jump across the stream if you give them a chance. So I think it needs to be a collaborative effort amongst all of the landowners, and how you work that out between funding, etcetera, etcetera, is another matter. But, you know, if stream restoration isn't included, then I think it's all kind of silly.

10:28:38 / 3:25:42

Lorne Parnell: Okay. Rick, do you have any other issues regarding any of these subjects that are on your list.

Rick Taintor: Well, just following up on Professor Ballestero's recommendations. He noted that there are a number of things that are not under the control of the applicant. But there a couple of things that are completely on their property. And I think, my recommendations would be that where it's possible to include that in the next revision of the site plan. The things specifically I'm thinking are p. 4, where there's talk about restoring some of the erosion that occurred from the two outflows. Those are both on the property. And then the one I think would have probably the most impact on the plan would be p. 6, talking about laying back the slope or using reinforced earth at the steep slopes.⁷ I think before you get to anything in terms of a planting plan, or invasives removal plan, or anything along those lines, you need to be figuring out what the base is. What's going to be changed? Is there going to be some type of reinforced earth added? So these are things that, I think, are very pertinent to this particular site plan. And I would recommend that the applicant incorporate these recommendations because they don't involve, they don't require involving any abutters or require any involvement of the Town.

10:30:18

Lorne Parnell: I agree, what we've heard tonight are, I assume, recommendations. But I think that we have to see what is actually being proposed by the applicant, at some point, fairly soon, I would hope.

⁷ At the [March 24, 2021](#) PB meeting, CDA finally confirmed that it had no intention of laying back the slope, and that that was just a good idea that others could do, with the help of CDA's \$25,000 contribution to Brook restoration.

10:30:34 / 3:27:38

Joe Persechino: So, I appreciate comments so far. What sounds like I'm hearing is you're asking for a *more* detailed restoration plan for the bank and vegetation adjacent to Mill Plaza located on the Mill Plaza property alone.

Lorne Parnell: Certainly, yes.

Joe Persechino: I think that's something we probably should come back with and present. Beyond that, though, anything that would require work in College Brook or anything off the site or anything like that, that's where the contribution aspect would come into play. Where impacting the wetland, obviously, we're not going to do that, you know, as part of this project because that would have to be looked at as a while, And, again with the stakeholders and how that would happen, off-land abutters, etc. So, um, the other items that you've mentioned, I think we can come back with a more definitive plan and what happens there and be able to present that.

Lorne Parnell: That's good.

10:31:38

Sally Tobias: One quick question about the help with the funding. Are you saying that Colonial Durham will be offering up matching funds, or any, or did I misunderstand. For those areas where we would be applying for, for those areas where, if the Town *chose* to apply, and I'm not sure how that would work, where some of this is private property. Were you saying you would coughing up those matching funds?

Ari Pollack: We're saying we would contribute. So let me try to explain as clearly as I can. There's two components to this: One is what can we do on our property, and we just had a good discussion about it seems like focusing on the green band, essentially the Shoreland [25'] buffer to the Brook We'll come in with a more robust restoration and planting plan for that area.

Step Two: Recognizing that there are a number of properties that are part of this solution – we've heard that we're less than 1% of this watershed – we don't pretend to have access or the ability to control what goes on beyond the site. We would make a contribution of \$25,000 to a fund managed, whether it's by the Town or some conservation group in the area. But we would put our *dollars* into that kitty toward this global solution. And whether it's a conservation group or whether it's the Town, they could use that money toward the common goal, maybe on our site, maybe in the Brook adjacent to our site, maybe on other people's sites. But it would be a concrete contribution towards the solution. We don't know how much how much it's going to cost. We don't know who else is going to contribute or cooperate, and we don't know the extent

of all the work that will be done. But we do know that the Town will expect to see something from us, and that's our good-faith offer.

Sally Tobias: Will you put that in writing in some way?

Ari Pollack: We would expect that to be a condition of approval.

Sally Tobias: A condition of approval. *Thank you!*

Ari Pollack: My pleasure.

Lorne Parnell: Okay, Rick, do you want to move on to something else?

10:34:00

Joe Persechino: Before we move on, if you don't mind. As we're putting this more detailed plan together. Can I just get a sense for sidewalk directly adjacent to the roadway that connects Mill Road to other side of the site.

[Discussion of sidewalk issue and then other Mill Plaza issues, e.g., Traffic, Fiscal Impact.]

11:00:30 / 3:57:34 [FOUR HOURS into the meeting – Finally open to public input]

Lorne Parnell: Okay, I think we should go to the Public Hearing!

Ari Pollack: Thank you.

Lorne Parnell: It's 11 o'clock. Heh.

Sally Tobias: Keep it short!

Lorne Parnell: I think it's in your interest, people want to speak to speak as quickly as possible. But I have Beth Olshansky, first on the list.

11:00:58 / 3:58:02

Beth Olshansky: Good evening. It's late! I'm very confused. Because I always thought the purpose of a Public Hearing was to listen to the public's opinions and concerns *before* there was deliberation and voting. So this has been a particularly trying meeting for me and all the other people who have spent time studying these issues and were hoping to offer input that the Planning Board would consider before voting. I don't know if it's unusual what happened tonight.

But it's really is very disconcerting for those of us who care about this deeply and wanted to offer input. And I'm not sure what the point of my input would be now that you've already voted. Is there a point to offering -

Lorne Parnell: Maybe I could ask which vote are you...

Beth Olshansky: I'm talking about, I had comments about the Brook I wanted to make, and I had comments about fiscal impact analysis, so -

Lorne Parnell: We did not do any voting on the Brook. There was no voting on the Brook. I said, there was no *voting* on the Brook. We were simply discussing the issues involved.

Beth Olshansky: Well, it seemed like the Board had decided they wanted to ignore the Conservation Commission's recommendations.

Lorne Parnell: That's not correct. If you got that impression, that is, that is, the Board was discussing the, and, uh, discussing whether or not this was something that we would, uh, uh, well, let's say, if we were going to, at this point whether there was going to be agreement with that, then we would have to do something about it. But, I think, it was something that was discussed and presumably the issues will be pushed into, into the future.

11:03:00

A few public comments continued with 6 other members of the public:

Nancy Sandberg

Eric Lund

Joshua Meyrowitz (with PowerPoint)

Robin Mower

John Hart

Deborah Hirsch Mayer

[The meeting was adjourned at 11:35pm]

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UPDATES

Conservation Commission members did attend the subsequent Mill Plaza Public Hearing on February 24, 2021, and explained their formal recommendation ([agenda](#), [video](#), [minutes](#)), but they were starting with the disadvantages established by the deliberations of January 27, 2021, quoted above.

The Board's rejection of the Conservation Recommendation solidified at the August 25, 2021 Public Hearing ([agenda](#), [video](#), [minutes](#)) after resident Beth Olshansky pointed out that the CDA site plan violated the WCOD setback and did not meet the Conditional Use criterion of "no alternative location." Then she was immediately "corrected" as follows:

9:11:26 pm

PB Chair Paul Rasmussen: Thank you, Beth. Um, Mr. Taintor has pulled up section 175-61, which is "Conditional Uses in the WCO District." Um [*Looking at Taintor's iPad propped up on the table horizontally*] Item one in the list of things that are per-mit-ted [*stretched out for emphasis, then quoting*] "The construction of streets, roads, access ways, bridge crossings, and utilities including pipelines, power lines, and transmission lines." So the plan that's been presented to us tonight is fully compliant with our conditional use in the wetland zone. [pause] By pulling the parking out, we made it that way. [pause] I know it's been a number of people tonight who have said that the streets are not permitted. That isn't, is incorrect and I bring this up to try to remove that point of confusion.

Beth Olshansky then corrected the chair's correction in a letter, [Beth Olshansky 8-31-21](#): "When reading from 175-61, the Chair stopped reading after Section A, neglecting to consider Section B regarding the limited circumstances under which roads are permitted in the 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 WCOD that is reasonably practical for the proposed use;'"

Beth Olshansky's letter continues: "Note that the Conservation Commission has not advised the Board to allow a road in the WCOD for the very reason that they believe that there is an alternative location outside the WCOD. While ConCom did agree to allow the entrance to remain in its current location if the applicant so chooses, they did not state their acceptance of a road within the WCOD."

The Planning Board has, thus far, ignored this correction from Beth Olshansky and other residents (as also restated in [Letter from Attorney Nathan R. Fennessy 10-26-21](#)).

The site plan on the table as of January 2022 violates the wetland setback, and does not heed the Conservation Commission recommendation. The Planning Board has not yet asked for the plan to be made compliant.