

To: Rick Taintor, Todd Selig and Planning Board

From: Peter Wolfe

Date: June 12, 2021

Re: Parking Not Permitted by Conditional Use in WCO

Parking is not permitted as a conditional use (see 175-61 A. 1) in the Wetland Conservation Overlay District within the 75 foot upland buffer strip pursuant to the Durham Zoning Ordinance adopted October 2, 2017 and the earlier version applied to Mill Plaza.

To understand why there is no difference between the current zoning ordinance and the earlier one applied to Mill Plaza look at the minutes and DCAT of the Planning Board meeting on October 12, 2016 when the October 2, 2017 changes to the zoning ordinance were proposed and adopted. The question regarding parking as a conditional use in the 75 foot upland buffer was discussed. See below from the minutes of the October 12, 2016 meeting which minutes were approved without changes on 12/14/16:

175-61. Conditional Uses in the WCO District.

A. The following uses shall be permitted as conditional uses in the WCO District provided that the use is allowed in the ~~underling~~ underlying zoning district and a Conditional Use Permit is granted by the Planning Board in accordance with Article VII:

1. The construction of streets, roads, driveways, access ways (but not including any parking areas other than those serving single-family uses), bridge crossings, and utilities including pipelines, power lines, and transmission lines;

There was discussion on #1. Mr. Behrendt said what was proposed wasn't a change in policy, and just provided clarification, including the inclusion of "driveways". He said if the Board thought parking should be allowed by conditional use, it should discuss this. He noted that this would be a policy change. There was discussion, and the Board agreed to leave the language as it was proposed.

There was no policy change between the two versions of the zoning ordinance regarding parking as a conditional use in the upland buffer. The DCAT recording of the 10/12/16 meeting reflects the discussion of these changes:

DCAT verbatim Planning Board meeting of the 10/12/16 related to WCO zoning:
Transcripts by Robin Mower from DCAT on Demand videorecording.

Conversations from the DCAT recording:

Behrendt: Well, actually, this, what I'm, the proposed addition is not a change in policy, but really just clarifying. I added driveways, because we allow driveways cause they're considered access ways, but I wanted it to be clear. And in parentheses is the same thing. If you have a driveway for a single family, well, you park there, but it's really just a driveway, so we would allow that. But parking areas for commercial are not allow. So there's no change in the blue [added language], it's just clarification of how it's administered. If you think parking should be allowed by conditional use, we should talk about that. That would be a policy change—parking for commercial.

Later:

Behrendt: Yeah I recommend leaving it. I think the thinking here is, sometimes you have need to have a driveway, because you have limited choices for access, whereas parking lots, the effort really is to keep them outside.

(Chair)Corrow: So we'll leave the new language.

Behrendt: I would suggest leaving it.

(Chair)Corrow: I'm fine with that

As you see there is no difference in policy between the two versions of the zoning ordinance with the Planning Board deciding to keep parking lots out of the WCOD. The only change in the 2016 version was to add driveways and clarify how parking for driveways should be treated.

In addition, Michael Behrendt was asked several times if parking should be allowed in the 75 foot buffer by conditional use and each time he said no.

Also discussed was the relationship between the Wetlands Conservation Overlay District's 75 foot upland buffer and the Shoreland Protection Overlay District's 25 foot building and structure setback. See the following exchange from the DCAT transcript:

Rasmussen: But you do raise a valid point in that the Shoreland and the Wetlands Conservations, The Shoreland Protection Overlay overlap each other. So if they're in direct conflict, that's not good, either.

Behrendt: Well, you would, for College Brook and Pettee Brook, you'd have 25-foot for Shoreland, 75 feet for Wetland, so you'd just go with the 75 feet in the review.

Clarifying where we stand:

1. Parking is not allowed by conditional use in the Wetlands Conservation Overlay District (see 175-61. A.) pursuant to the zoning ordinance applied to Mill Plaza.

2. Any conflict between the Wetlands Conservation Overlay District's 75 foot upland buffer and the Shoreland Protection Overlay's 25 requirement, "you'd just go with the 75 feet in the review" per Michael Behrendt's comments.