

**DURHAM CONSERVATION COMMISSION MEETING
MONDAY, OCTOBER 26, 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; Coleen Fuerst; Mary Ann Krebs; Jake Kritzer, Walter Rous; Alternates Liz Durfee and Roanne Robbins.

Also Present: Michael Behrendt, Town Planner; Contract Planner Rick Taintor and Lucie Bryar, Minute Taker

Absent: John Nachilly; James Bubar was absent most of the meeting due to a lost internet connection; Alternate Roanne Robbins was seated and voted in his absence.

I & II. Call to Order and Roll Call.

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.

Chair Needell then conducted roll call and seated alternate Liz Durfee as a voting member this evening, filling in for John Nachilly.

III. Approval of Agenda

Chair Needell asked to amend tonight's agenda to table Item VI. (Updated Guidelines for Acquiring Legal Interest in Conservation/Open Space Land) and to include an update from the Land Stewardship Coordinator under Other Business.

Mr. Rous MOVED to amend the agenda as proposed; SECONDED by Ms. Krebs; APPROVED unanimously, 7-0, Motion carries.

IV. Public Comments: There were none at this time.

V. 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 serving as the Town's Contract Planner.) Central Business District. Map 5, Lot 1-1.

Before inviting the presenter to come forward, Chair Needell said the role of this Commission is to protect the natural resources of Durham. Parts of the Mill Plaza are in the shoreland and wetlands overlay protection districts. The Commission makes recommendations to the Planning Board and does not determine conditional permitted use in this case.

Engineer Joe Persechino then came forward to present on behalf of the applicant. Participating with him this evening are Sean McCauley (agent) and UNH Professor Tom Ballestero of Streamworks, LLC, who has reviewed the project plan.

Mr. Persechino showed the current site plan, noting the project has been before the Planning Board for about five years, with multiple “starts and stops.” He said the proposed project is within the shoreland and wetland buffer; nothing is being proposed within the wetlands or shoreland itself.

The site plan shown this evening was last submitted to the Planning Board in January 2020. The plan shows **Building A** (including Hannaford Supermarket, Rite Aid and a bagel shop); **Building B**, which would be mixed-use commercial and retail space on the ground level; office space on the second level and residential units on floors 3 and 4. **Building C** would also be mixed-use, with retail, commercial and parking space on the ground level and residential units in two stories above.

Mr. Persechino displayed a slide showing the two buffer areas and said all work proposed is within an area already developed and disturbed. He said the project will improve the treatment of stormwater runoff and reduce the amount of impervious surfaces.

He described the proposed drainage system and made the following points:

- None of the runoff water on the property is currently being treated or mitigated;
- The developer proposes to install a state-of-the-art “Jellyfish” treatment system; a gravel wetlands and a Rain Garden area – all for the purpose of capturing and treating water before it flows to College Brook.
- The current seven discharge points (from curb cuts, culverts, etc.) would be reduced to two points, in part due to installation of a continuous curb.
- The peak flow rates to College Brook would be reduced as a result, by as much as 65% during a two-year storm, which is a fairly common occurrence.
- The impervious area would be reduced by just over ¼ acre within the buffer.

Chair Needell then invited Commissioners to ask questions and/or discuss concerns.

Ms. Fuerst asked how engineers arrived at the storm flow rate information to which Mr. Persechino replied that a model was created using HydroCad software. He added the Planning Board had a similar question and asked for a review of the model by an independent third-party engineering firm. Minor modifications were made to the plan as a result.

Ms. Fuerst asked if Northeast Climate Change data was considered in the model and Mr. Persechino said yes; those numbers were increased by 15% in the model.

Chair Needell summarized her understanding of what is being proposed within the 25-foot buffer: a bituminous concrete walkway, part of a 5-foot impervious walkway; and the vehicular entrance to the plaza.

Within the 75-foot buffer, she said the developer's plan shows part of a five-foot bituminous walkway; additional parking spots; landscape spots; snow storage; an underground retention basin, a retaining wall, rip rap, grading and fill. Mr. Rous added that underground utilities would also be in this area.

At this point, the public was invited to make comments. Several Durham residents came forward to speak in opposition to the plan, namely: Timothy Horrigan, Eric Lund, Robert Russell, Diana Carroll, Matthew Komonchak, and Joshua Meyrowitz. [Their full comments can be heard on the D-CAT video recording on the town website.]

Some of the points raised by residents included:

- The project seems out of scale for the property; The only entrance and exit is near College Brook and may be impassable during a spring flooding event. (Mr. Horrigan)
- Applicant claims there are no downstream obstructions, however there is a sewer line that crosses College Brook. A one-time bridge crossing the brook washed out some years ago. Flooding is an issue. (Mr. Lund)
- The developer proposes to level a ledge and destroy a small urban forest on the Northeast corner of the property in order to accommodate Building C and a retaining wall. It's unclear how removing the forest and the ledge will decrease the flow rate of water. (Mr. Russell)

To this last point, Mr. Persechino replied that the soil in the area under question is of poor quality and does not absorb water well. He maintained that the rate of runoff will be reduced through the very large underground retention basin and rain garden.

Additional public comments:

- Now is the time to make up for neglect of College Brook over the last 50 years; The project is a clear violation of ordinances designed to protect wetlands buffers. Installing technology to mitigate rainwater runoff does not preserve the buffer as it was intended. (Ms. Carroll)
- The project has encountered "overwhelming public opposition" as well as staunch business opposition, including from the anchor tenant, Hannaford. A separate application to add parking may involve clear-cutting an adjacent hillside. Under Colonial Durham Associate's settlement with the town of Durham, the applicant is obligated to increase the natural buffer – and has presented no evidence of this; Applicant has been evasive about questions regarding the ledge and small urban forest. (Mr. Komonchak)
- Homeowners on Chesley Drive have lost thousands of dollars of shrubs, trees and perennial gardens due to flooding of College Brook. (Several slides were shown of flood conditions). Colonial Durham Associates mis-informed the independent stormwater plan reviewer about flood conditions, stating there were none. The proposed project is a "brazen violation" of conditional use. The town of Durham seems to have abandoned its promise to only allow re-development if it would alleviate downstream flooding. (Mr. Meyrowitz)

Commissioners then asked Engineer Persechino additional questions about the pervious/impervious surfaces; rate and volume of stormwater runoff; increased parking and the effectiveness of the raingarden; snow removal, the Jellyfish filter, etc.

At this point, UNH Professor Tom Ballestero was invited to come forward. The Professor completed a review of the proposed site plan and did not participate in its design. He noted the existing culvert is way too small, resulting in bed and bank erosion. He outlined some improvements that could be made to this portion of College Brook that would not require a wetlands permit:

- Remove invasive species
- Remove trash & debris from College Brook
- Repair drainage on the embankment
- Curb the southern boundary of the property to alleviate erosion and instability
- Re-vegetate a steep bank and possibly add a riparian buffer

Professor Ballestero said addressing issues in only one small downstream section of College Brook does not mitigate issues in the larger watershed upstream.

Mr. Persechino briefly discussed modifications/improvements that may require a wetlands permit and said it's possible the developer could work collaboratively with interested parties and explore grant funding to address the area between Mill Plaza and Chesley Drive. He noted this area is not part of the site plan.

Action item: Commission members decided that given the complexity of the project, a Mill Plaza site walk with engineers would be beneficial. Chair Needell will arrange a suitable day/time prior to the November 23rd meeting; Members of the Planning Board will be invited and information will be posted so the general public can attend.

Mr. Rous asked Contract Planner Rick Taintor about an application for a new parking lot on an adjacent property, ostensibly to satisfy Hannaford's objections to the current Mill Plaza plan. Mr. Taintor said the status of that application is vague and added the Planning Board can only review the Mill Plaza application on its own merits, even though the two projects appear to be related.

Mr. Kritzer said he would like the Mill Plaza applicant to come to the November meeting prepared with responses to concerns raised by Durham residents this evening.

VII. Take Action for Wildlife

Ms. Needell gave a brief update on this initiative. She and others from the Conservation Commission will meet tomorrow with mentors from UNH Extension Service and the NH Association of Conservation Commissions to select their project. The group is leaning toward looking at wildlife corridors in Durham. The consensus among commissioners was that this topic seems worthwhile.

VIII. Election of Vice Chair

Chair Needell said Ms. Krebs is willing to serve in this position. No other commissioners came forward to express interest or make a nomination.

Mr. Rous MOVED to nominate Mary Ann Krebs as Vice Chair of the Conservation Commission; SECONDED by Ms. Fuerst, APPROVED unanimously, 7-0, Motion carries.

IX. 2021 Conservation Commission Schedule

A schedule of proposed meeting dates for 2021 had been distributed. There was discussion about some dates being in conflict with school vacation weeks. Chair Needell and Mr. Behrendt will meet to amend the schedule.

X. Other Business

The Commission received a memo dated October 21, 2020 from Land Stewardship Coordinator Ellen Snyder, who could not attend tonight. Chair Needell read parts of the memo pertaining to funding requests/ action items.

Mr. Kritzer MOVED to uncommit \$1,000 that was approved on April 27, 2020 for removal of stumps and grading area bordering the Doe Farm foundation area; SECONDED by Ms. Fuerst, APPROVED unanimously, 7-0, Motion carries. [Funding was not needed because work was completed by Orion Tree Service using other Conservation Commission funds.]

Chair Needell MOVED to authorize expenditure of \$122.23 from the Patron's Trust to cover additional cost of the materials to build the Merrick trail bridge; SECONDED by Mr. Rous, APPROVED unanimously, 7-0, Motion carries. [According to Ms. Snyder's memo, private fundraising efforts raised \$2,740 toward the Merrick bridge off Bagdad Road and the Conservation Commission previously appropriated \$2,500 for the project. Total materials were \$2,622.23, leaving a shortfall of \$122.23. The remaining funds (\$177.77) raised for the bridge will be available for other trail projects, which donors allowed on their pledge forms.]

Chair Needell MOVED to change in the April 27, 2020 Meeting Minutes the sentence, "\$800 to West Environmental Inc. for wetlands permits applications for Stevens Woods and Merrick Trail" to "\$880 to West Environmental Inc. for wetlands permits applications for Stevens Woods and Merrick Trail" and approve the minutes as corrected; SECONDED by Mr. Rous, APPROVED unanimously, 7-0, Motion carries.

XI. Review of Minutes: August 24, 2020 and September 24, 2020

Ms. Krebs MOVED to approve both sets of minutes as submitted; SECONDED by Ms. Robbins, APPROVED 5-0-2, Motion carries, with Mr. Rous and Mr. Kritzer abstaining.

XII. Adjournment

DCC FINAL MINUTES – OCTOBER 26, 2020

With no further business, Ms. Krebs MOVED to adjourn the meeting at 9:56 p.m., SECONDED by Mr. Rous, 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.