

December 20, 2020

Dear Members of the Durham Conservation Commission,

I have just watched your long and challenging meeting on Dec. 9 on DCAT. This is a big and overwhelming project. I applaud you for acknowledging that you have an opportunity to right some wrongs that have gone on for decades. This would be a great service to the community and is well within your purview to protect the brook ecosystem.

I have been closely following this project for years. I think I have watched every Colonial Durham presentation and attended every public hearing. I am also well aware of the terms of the Settlement Agreement. I concur with others, including Rick Taintor, that CDA has not offered any meaningful increase in the College Brook vegetated buffer. CDA has also repeatedly chosen to address other Settlement requirements at their minimum levels (such as amount of commercial space, something that would be of benefit the Town). On the other hand, they have, as you noted, pushed the envelope on aspects of the project that support their interests (such as size and height of the buildings and number of parking spaces).

I would like to address parking, the entrance, how they pertain to the buffer, and a few other smaller details.

Parking

As background to the information I provide, please understand that CDA has been renting parking spaces without permission from the town for years. One year, Robin Mower and I counted well over 100 Mill Plaza parking permits on the dashboards of cars, many of which had out-of-state plates. (She and Josh Meyrowitz repeatedly counted those spaces, with similar findings.) Soon after, when I inquired directly about this at a public hearing, Ari Pollock, CDA's attorney, stated that during the summer they rented approximately 25 spaces. It was well into the fall when I asked and, as I noted, I had just done a permit-count myself of over 100. Thus, there has been a credibility gap between what we are told and what we have observed with our own eyes.

More recently, when asked about plans for renting spaces, CDA's agent Sean McCauley carefully chose his words when stating that they will not be renting to student tenants. Note that he did not state that they will not be renting spaces, period. This is an important point because in a letter from Mary Gamage, Hannaford's Director of Real Estate, she firmly states that CDA will not be permitted to rent spaces in front of Hannaford and Rite Aid. Left unsaid is that CDA would be free to rent spaces elsewhere on the site.

At the Dec. 9 ConCom meeting, it was stated by Tighe & Bond's Joe Pereschino that there are 411 proposed spaces in the current plan. The Settlement Agreement requires an increase in parking spaces from the existing 345 ("...shall be increased from the existing 345 spaces to a number acceptable to the planning board based on the zoning ordinance and site plan regulations.").

Given CDA's interpretation of what "increased" means (with one example being the proposed "increased buffer"), I would say that 346 parking spaces meets the terms of the Settlement Agreement. The excess 65 spaces (411 minus 346) could be rented to drivers of vehicles who are not CDA student tenants as is currently the practice. According to Walter Rous, 45 of the current proposed spaces are wholly or partially in the wetland protection area and should be eliminated. I concur.

According to Rick Taintor, only 338 spaces are required to meet Town regulations for the proposed amount of commercial space. So even if you went with the minimum to meet the Settlement Agreement (346 spaces), the plan would exceed the commercial requirements by 18 spaces and could clear the wetlands buffer of pavement.

A Meaningful Buffer

Meanwhile should ConCom choose to reclaim the maximum amount of pervious surface permitted by the Settlement Agreement, that would pull all impervious pavement out of the wetlands buffer and provide land equal to twenty additional parking spaces (65-45) that could be viewed as a trade-off for the large portion of the hillside (pervious surface) which will be replaced by impervious surface. This would allow for a meaningful (and actually required) increased buffer along the brook, and even the creation of a green space or park with benches and picnic tables to balance the proposed increase in impervious pavement caused by the removal of the hillside. (Please keep in mind that the original plan was called "The Village Center" and came with many promised amenities for the Town which have, over time, disappeared due to lack of space because of the oversized buildings and parking demands.)

ConCom is left with some important choices: protect the brook or allow parking beyond what is required, leaving open the potential for rental spaces. Which offers the greater good?

Entrance

Whether or not the entrance to the Plaza (a portion of which currently lies within the 25' shoreland setback) is grandfathered, the roadway and the parking lot are not. Thus, ConCom could recommend that the roadway and all impervious pavement be removed from the 75' wetlands setback. CDA would then be left with a choice of having the roadway make a sharp left after cars and trucks enter The Plaza, or choose to move the

entrance to the north along Mill Road to allow for a straight entryway. With discussions at the Traffic Safety Committee and Planning Board about installing a stop sign, the argument for keeping the entrance as far south as possible becomes moot.

ConCom could choose to require a consistent 75' buffer along the brook as our regulations require or choose to compromise with a consistent 50' "downtown buffer." Either would encourage CDA to move the entrance away from the brook and that would be a good thing.

Traffic Islands

During the December 9 meeting, there was discussion about whether or not there should be vegetated islands within the 75' buffer. Of course, this would become moot if ConCom decides to ask for a consistent 75' buffer. If not, I would remind members that worries about over-care of the islands seems unwarranted given the past 50 years of disregard for even keeping trees alive. I can't imagine CDA not agreeing to not fertilizing landscaped islands.

Trash

I was surprised that some members of ConCom did not think CDA should be responsible for picking up trash on their property. Aren't all landlords and businesses in Town responsible for maintenance of their property? Bringing in 258 students will certainly have an impact of increased trash on the environment and the brook. For the great financial rewards this project promises to bring CDA, shouldn't they be responsible for picking up their trash?

In Closing

I hope that ConCom will continue to consider in earnest this opportunity to expand the buffer, improve the much-neglected brook, and compensate for the removal of a large portion of a hillside. Your recommendations may or may not be accepted by the PB, but at least you will have done your part to improve a major downtown project for the better.

Thank you for all your hard work.

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