

**Expanded from November 23, 2020
Public Comment at Conservation Commission Meeting**

Colonial Durham Associates' (CDA's)
“Alleged Outcroppings”

December 3, 2020

Conservation Commission members have seen only a small amount of CDA's "framing of reality." To help inform your critical advisory role, I will briefly and bluntly highlight for you here what I see – from years of experience with CDA – as a *typical pattern* in what has been alleged to you so far by CDA.

Joshua Meyrowitz, 7 Chesley Drive, Durham, NH

Prof.Joshua.Meyrowitz@gmail.com [VP1]

Rough role for “messenger”: I admire Mr. Persechino’s technical & communication skills. I know that he is in a tough spot in representing CDA, a client with a low honesty record with Town boards.

Conundrum for Review Boards: CDA has very poorly maintained the Plaza for nearly 3 decades, and now CDA is using the *degraded condition it created* to incentivize Durham to accept a plan that would address *some* past sins – while continuing to violate Zoning, including wetland setbacks.

Pre-Joe crime: I also know that Mr. Persechino did not work for CDA at time of illegal bulldozing of eastern hillside that increased flooding & damage for those downstream.

Yet, Mr. Persechino is the prime voice of CDA for your Conservation review, and the current project’s engineer, and thus what he says – and what he *leaves out* – is significant.



At the Oct 26, 2020 ConCom meeting, Mr. Persechino repeatedly emphasized the planned **decrease in impervious** surfaces in the WCOD & SPOD* in the proposed site plan. That, *in itself*, appears to be accurate.

Yet, that emphasis is a typical CDA strategic half-truth.

Until confronted by residents on [Oct 26](#) (35:40+), Mr. Persechino did not address the fact that the **overall plan involves a significant overall increase in impervious surfaces** on the Mill Plaza site.

*Wetland Conservation Overlay District & Shoreland Protection Overlay District.



CDA has obscured that the plan also entails **major aesthetic & environmental damage** to the site, with the **destruction of more than ONE ACRE** of hillside between the Plaza and Main St.



Indeed, removing that thickly vegetated hillside **adds strain to the proposed stormwater system to the point of there likely being no improvement in the downstream flooding** that neighboring property owners have experienced as getting worse after CDA's illegal bulldozing of the eastern wooded hillside in 2002.

Per CDA: Most flooding downstream is from upstream of Plaza (UNH).

But UNH has worked to reduce flow into Brook, while Plaza promises only not to significantly increase it.



Town Boards should require a systematic study of in/out water flow at Plaza to confirm or refute residents' observations.

Mill Plaza is unique in scale/density of impervious surfaces directly along brook.



https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning/page/54437/mill_plaza.jpg

Indeed, CDA's current proposal would significantly *increase scale & density of impervious surfaces upland of Brook flood zone.*

“Though upland areas are not at great risk of being flooded, the management of these areas can affect the flooding and erosion downstream. Clearing of natural vegetation and creation of impervious surfaces in upland areas hinders stormwater absorption, increasing the amount of runoff and its flow.” [Flood Resilience Plan](#), 2015, pp. 8-9.

I appreciate CDA finally acknowledging the 2002 illegal bulldozing with images below on Nov 23 2020. Yet, in fact, *full* eastern hillside (est. 9,000sf) was bulldozed, including so-called “grass area” at right.

The entire circled area, at right, was bulldozed by CDA in Sept 2002, with no NHDES, no ConCom, & no Planning Board approval – and never restored.



The entire marked area, at left, including the black oval, (**well within WCOD**) was bulldozed & compacted for paving (no water absorption) before Town required thin top soil for seeding.

Disputes over *degree* of added flooding impact aside, it's *indisputable* that the illegal 2002 bulldozing of 9,000sf of vegetated hillside increased runoff & flooding downstream – and therefore that the current CDA site plan ought to consider the “pre-existing condition” to be from before 2002 damage.

MISLEADING: CDA has implied that its **stormwater system is robust enough to address a once-in-a-hundred years flood**. Yet, 50 years of reality have changed the flood-level *definitions*.

“100-year” floods will happen every 1 to 30 years, according to new flood maps by Princeton University

[Aug 23, 2019](#) — ‘**100-year**’ floods will happen every 1 to 30 **years**, according to new **flood** maps. A **100-year flood** is supposed to be just that: a **flood** that occurs once every **100 years**, or a **flood** that has a one-percent chance of happening every **year**.

But Princeton researchers have developed new maps that predict [coastal flooding](#) for every county on the Eastern and Gulf Coasts and find **100-year floods could become annual occurrences in New England**; and happen every one to 30 years along the southeast Atlantic and Gulf of Mexico shorelines.

"The **historical 100-year floods may change to one-year floods in Northern coastal towns in the U.S.**," said Ning Lin, associate professor of civil and environmental engineering at Princeton University.

NOTE: I forwarded this article to both Town Engineer April Talon & Contract Planner Rick Taintor in early 2020. Much has changed since the US Geological Society set definition of “100-year floods” in the 1960s.

Even by CDA's own projections, "Post-Development Flow Reductions" drop to almost nothing* by the time a "100-year" (really annual) storm would occur. Any larger storm would likely overwhelm the system, **INCREASING flooding** – *unless pervious areas were increased (along Brook) and spared (acre+ hillside).*

SUMMARY OF FLOWS DISCHARGING TO COLLEGE BROOK

STORM EVENT	PRE-DEVELOPMENT FLOWS (CFS)	POST-DEVELOPMENT FLOWS (CFS)	POST-DEVELOPMENT FLOW REDUCTION
1-INCH	3.34	2.09	37%
2-YEAR	24.93	8.67	65%
10-YEAR	40.69	24.02	41%
25-YEAR	52.99	41.30	22%
50-YEAR	64.44	54.41	16%
100-YEAR	77.99	73.22	6%

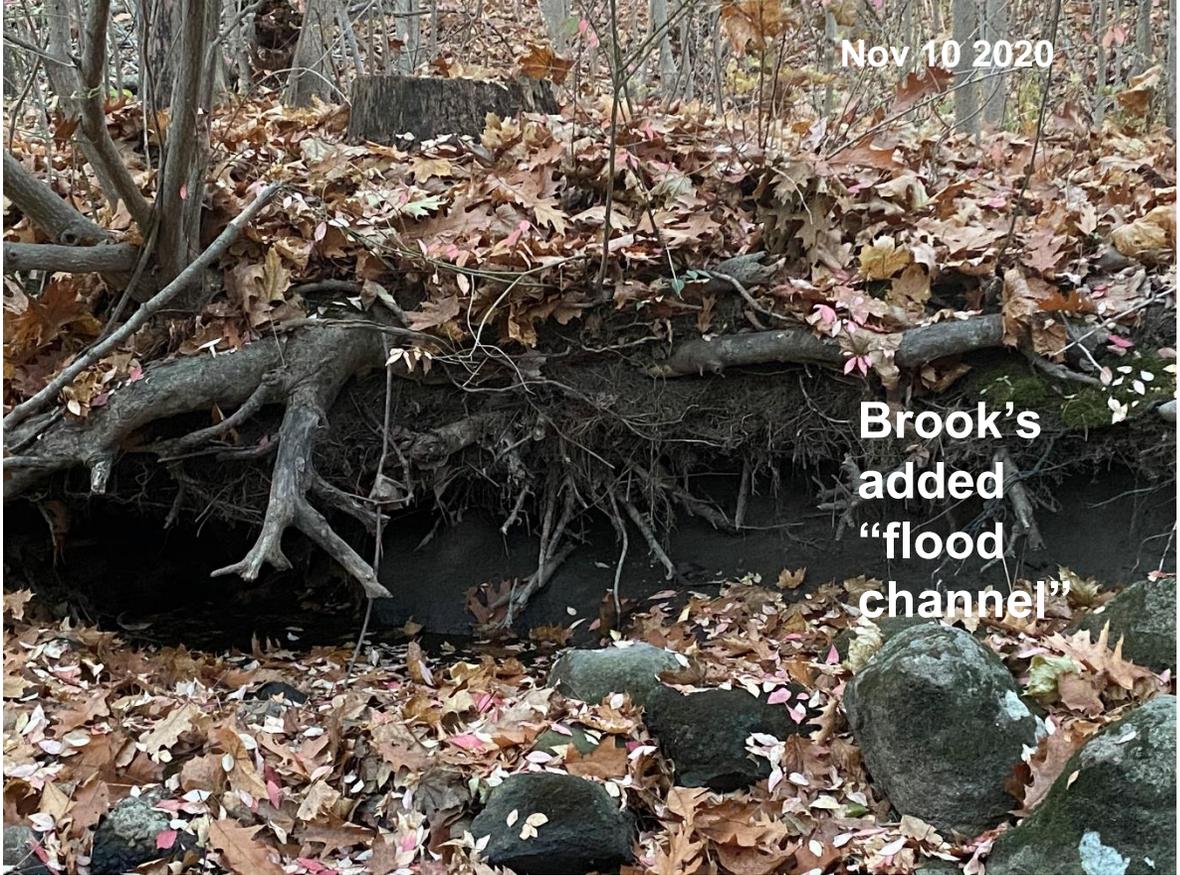
Presented by Joe Persechino: <https://durham.vod.castus.tv/vod/?video=f3a2a753-43ac-4ba1-a054-7bc7be9dd8df>, 9:06pm



*Not only is claimed reduction a *projection*, subject to a margin of error in calculation, but the 6% reduction is calculated from the POST-2002 *increase* in flooding from the illegal 9,000sf hillside bulldozing, rather than from the most-recent *legal* "existing condition," pre-2002. Note also that an "increased natural buffer...adjacent to the College Brook" is a requirement of the 2015 legal Settlement.

Approving a CDA site plan that would allow the “current level of flooding” to continue for the foreseeable future, would NOT “leave things as they are” in the WCOD/SPOD.

Additional damage to the brook bank and extended killing of vegetation would follow.



Post-flood silting kills bank vegetation; erosion along “flood channel” exposes roots, killing trees & other plants.

When forced by public input on Oct 26 to confront the slated destruction of the pervious wooded hillside, Mr. Persechino claimed that the hillside was primarily a ***granite ledge outcropping***.

This is a classic Ledge Outcropping



House Mtn, near Knoxville, TN, massive rock outcropping along trail





Does threatened Plaza hillside in the Plaza, *below*, look anything like a ledge outcropping, *above*?



Obliterating Plaza hillside would add stress to wetland and also displace birds & other wildlife and void wide benefits of this hillside outlined by USDA Urban Forestry Specialist [John Parry](#).

~Hillside is a ledge knoll, a ledge outcropping, not absorbing water as a forest would~ per Joe Persechino

***What sustains
these trees &
plants, if not
WATER?***

*Also note that by
focusing on "soil types,"
CDA ignores significant
water absorption by
vegetation ROOTS &
LEAVES.*



***Durham Master Plan
Goal: "Reduce the
trend of continued
loss of forestland and
other natural areas,
and increase the
quantity and quality of
existing forest cover
in developed areas." –***

LU-16

Panoramic photo of doomed Plaza hillside, July 21 2020



Despite high relevance of threatened acre+ hillside removal to effectiveness of planned stormwater system & health of College Brook Greenway, Mr. Persechino:

- **Refused to mark the boundaries of targeted hillside area** for the Commission Members and Public at the Nov 20 CC Site Walk, or even show the boundary line between the Plaza and the “Orion” housing;
- **Misled those at the CC Site Walk about CDA’s prior ELEVEN MONTHS of stonewalling** in response to multiple written and oral questions about the square & cubic footage of the targeted hillside;
- **Denied that Contract Planner Rick Taintor had only a few days before Nov 20 Site Walk finally been able to acquire accurate info (we think) from Mr. Persechino about 1-acre+ scale of targeted hillside.***
- **Has never corrected Board members or citizens** (including me) when we’ve made errors in his presence *favorable to CDA* (e.g., incorrectly SMALL square footage, 17,415sf, for threatened hillside).

*An astonishing 47,610sf, ***more than an acre***, almost 3x more than the smaller sf I/others had incorrectly drawn from [3rd party stormwater review](#) for increase in impervious area. See [Nov 18 2020](#) Taintor memo to PB & CC.

Outcroppings = “things that come to the surface”

I’ll use that term to quickly review a few other CDA “surfaced claims”

Punning on ledge/alleged – and on something that sounds a bit like “croppings.”

NOTE: Although some of my specific examples may fall beyond what the Conservation Commission sees as its core purview, the overall *pattern* of CDA communications that I detail suggests that the Commission should be very vigilant in obtaining accurate, verifiable, and *complete* information as it relates to the Commission’s advisory role for the Planning Board regarding CDA’s Conditional-Use application.

Other Oct 26 Deflections & Misrepresentations

CCM = Conservation Commission Member; JP = Joe Persechino, CDA Engineer

CCM: “So you’re in the area close to residential properties?...”

JP (8:30:28): “I believe the closest residential property is diagonally across, I believe this is the adjacent Toomerfs parcel [on Church Hill].

*Actually, as Town [map](#) shows, the closest residential properties are at Brookside Commons, Chesley Dr, & Faculty Rd. But Toomerfs (with **NO residence on closest-to-Plaza parcel**, 1-16) are the only abutters supporting the Mill Plaza project, since they hope to build a large parking lot to accommodate the Plaza’s student tenants. JP omits mention of the abutting properties whose owners have written/spoken against the Mill Plaza project, including Peter Andersen, Joshua Meyrowitz, Ellie & Donald Sutherland, Nancy Lambert, Marty Lee, Heather & Geoff Ward, Nathanael & Jessica Stewart, Mark & Jean McPeak, & John Hart.*

CCM: “You said the rain garden was limited in size because there’s not enough room. But if the parking were not as close to the wetland, there would be more room.”

JP: *[6 seconds of silence]*

CCM: That’s a question.

JP (8:43:56): Uh (laughs), I think we could, yes, if there was no development there we could....

CDA's Claims in Submitted WCOD/SPOD Narrative Deserve Close Scrutiny

CDA's [narrative](#) letter alleges a Conditional Use “existing condition” exemption and offers **three reasons for claimed “necessary” WCOD/SPOD incursions**

40,683 sf, 9/10th+ acre, into Wetlands Buffer & 1,392 sf, .03 acre, the Shoreland Buffer

“These proposed permanent redevelopment impacts are consistent with the existing condition and cannot be located elsewhere without altering the configuration and layout of the proposed buildings and use densities - all of which reflect the redevelopment requirements of Applicant's anchor tenant, Hannaford Supermarkets, and the terms of settlement between the Applicant and the Town of Durham....” – Item #1

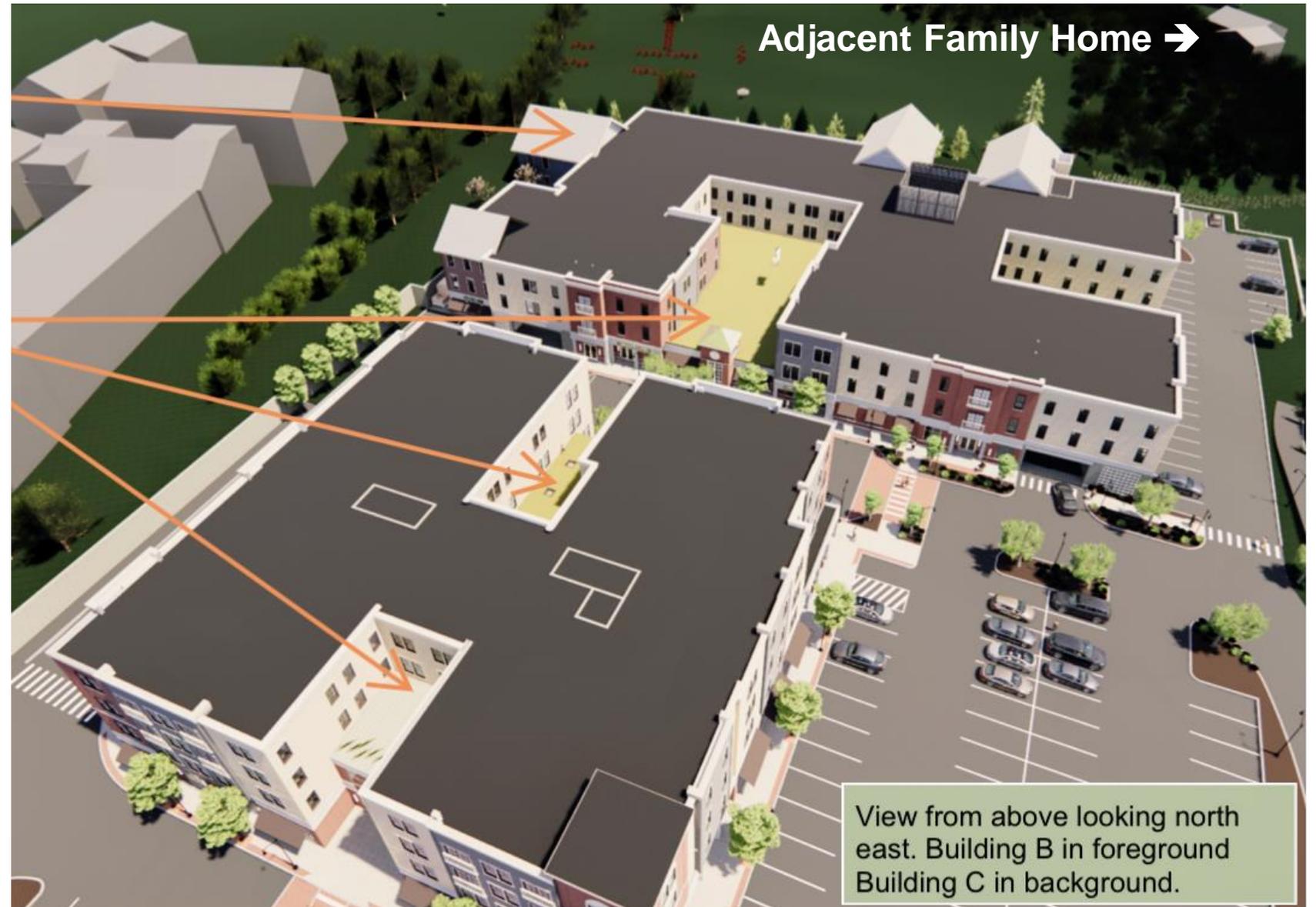
ALLEGED: the site plan is “consistent with the existing condition” [*thus, allegedly exempt from CU review*]

Reality: [Taintor Email 10-23-20](#) “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 also pp. 7-32 in [Joshua Meyrowitz 6-18-20](#) on decades of Plaza non-compliance with *original* regulations and pp. 2-6 there for summary of [Rick Taintor’s & Audrey Cline’s document](#) on why most CDA grandfathering claims are faulty.

ALLEGED: CDA proposed structures “cannot be located elsewhere without altering the configuration and layout of the proposed buildings and use densities”

Circular Reasoning: CDA “needs” to infringe on setbacks because it does not want to make its massive proposed buildings smaller. ***That is, CDA wants to do what it want to do.***



NOTE: Mislabeled by CDA as “looking North East” (where 2015 legal Settlement says housing should be located); actually looking SOUTH East.

ALLEGED: The configuration, layout, densities “reflect the redevelopment requirements of Applicant’s anchor tenant, Hannaford Supermarkets.”

REALITY: Hannaford has written 4 letters with objections to plan layout & density.

Indeed, Hannaford is conditioning its approval on a massive, football-field size new parking mound to be built on adjacent Church Hill property that would become “a part of Mill Plaza” through 2059.

That Church Hill area is currently a woods that slopes steeply into the College Brook flood zone.

See Hannaford letters: [6-25-18](#); [11-14-18](#), [8-10-20](#), [9-23-20](#)



ALLEGED: “all of which [the configuration, layout, densities] reflect...the terms of settlement between the Applicant and the Town of Durham....”

In reality, the [Settlement](#) (Sections 1d), **clearly states the *opposite*:**

d. 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.... (emphases added)

***Actual sights,
Nov 20 site walk***



***Current one-story Bldg 2 is
320~ ft from footbridge.***

**Current Bldg 2 is *very prominent* from
Chesley Dr & College
Brook footbridge.**



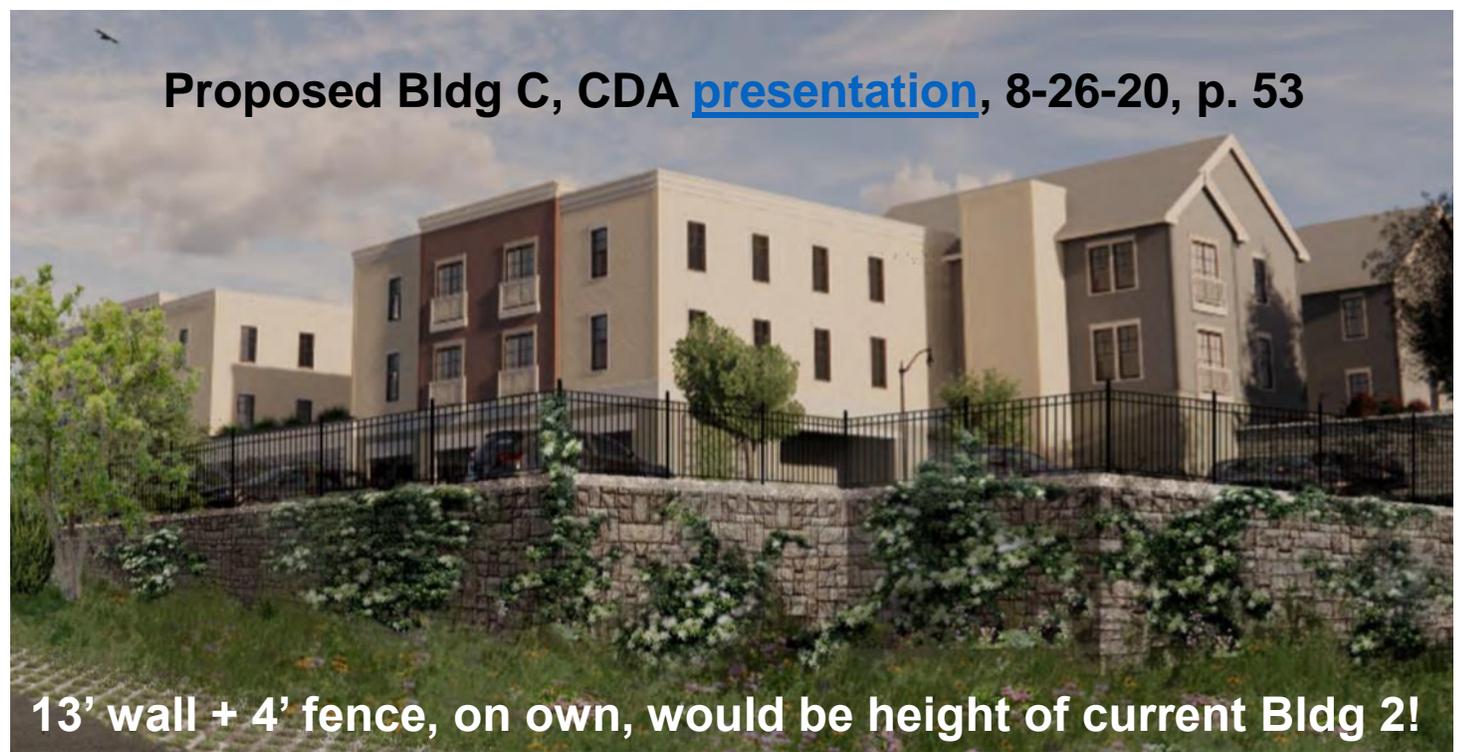
Top right: Bldg C would be 4 times taller & 150' closer to wetland & to neighborhood than currently prominent Bldg 2.

Bottom right: CDA's Alleged Illustration of completed project as it would supposedly appear from adjacent neighborhood.

CDA “disappears” massive structure into Disneyfied magic forest.

CDA insults intelligence of Durham boards and public with absurd, illusionary images.

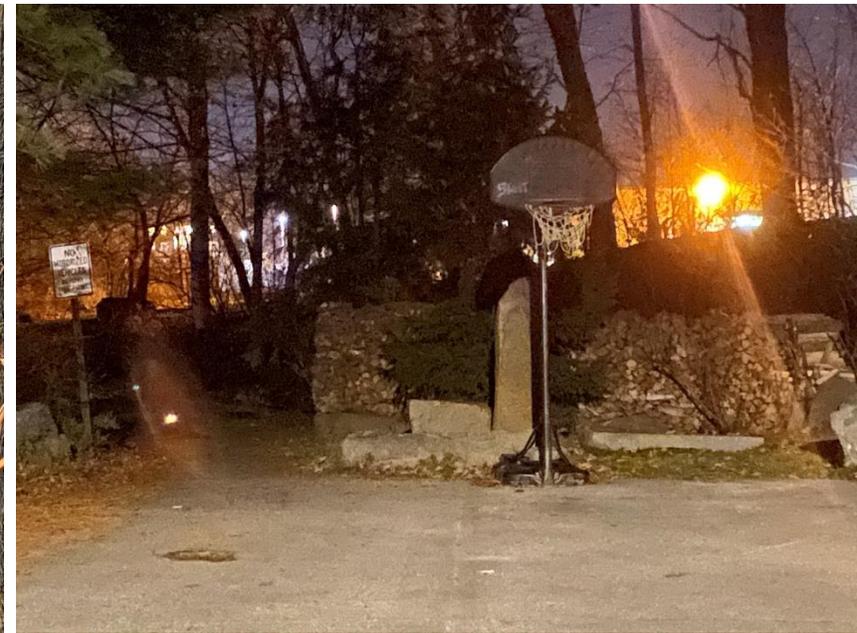
Proposed Bldg C, CDA [presentation](#), 8-26-20, p. 53



13' wall + 4' fence, on own, would be height of current Bldg 2!

In CDA [presentation](#), 11-18-20, p. 14, Bldg C “disappears”





Current Reality (top) vs. CDA Illusion (below).

CDA's "winter forest" displays **mulched brook bank & wetland**. In reality, brook & bank have routinely flooded downstream of Plaza since 2002, killing many trees and plants.



Coordinated Site Plans Are Alleged to be Completely Separate

In Oct 2019, Joe Persechino, on behalf of CDA, submitted a “Letter of Intent” regarding Mill Plaza Site Plan #9, which was explicitly linked to a large proposed parking mound on the adjacent Church Hill property. Indeed, submitted [Jan 2020 Site Plan](#) pictured the proposed lot *and* a pedestrian ramp between the two sites.

Also in Oct 2019, Toomerfs submitted Church Hill parking lot for preliminary review, mentioning Mill Plaza.

The coordination is explicitly indicated in both applications:

CDA Letter of Intent – **“In coordination with...the direct easterly abutter, Toomerfs, LLC, Colonial Durham Associates, LP (CDA) is preparing to move forward with its tabled planning application for redevelopment of the Mill Plaza.”**

Toomerfs application – **“The options for parking lot development also lends the opportunity for combined use of the parking lot with the adjacent proposed development on the Colonial Durham Associates lot....”**

The assertion that the two plans were “completely independent of each other” was challenged by attorney Mark Puffer in January 2020, representing scores of Durham residents, including residents from every street in the Faculty Neighborhood, as well as many other parts of Town.

Letter from Attorney Mark Puffer 2-5-20 (*excerpt*)

Representing scores of Durham residents

In the Planning Consultant’s review, dated January 16, 2020...Mr. Taintor worded it...: “There is an explicit connection between the two projects.” Mr. Taintor supports that assertion both through the CDA site-plan description of the number of parking spaces it will be providing in its proposed plan – 581 – which, in fact, includes 157 on the adjacent Church Hill parcel. Mr. Taintor also quotes from [Hannaford’s November 4, 2019](#), letter to the Board, regarding what Hannaford’s approval is contingent upon:

Evidence that the **proposed parking directly adjacent to the residential building (the “New Parking Area”) will be controlled and made a part of the Durham Plaza through the full available term of the Hannaford lease 12/31/2059**, with ongoing full access to the proposed residential building. All loading, parking and other activities related to the residential building would be serviced by the New Parking Area.

What could be clearer than **“controlled and made a part of the Durham Plaza”** to indicate that the **“new parking area”** is *not* separate from the Plaza site plan? Put differently, although the Church Hill parking lot is, as Ms. Spector-Morgan notes, not dependent on what does and does not happen with the Plaza (yes, Toomerfs, would be free to rent to whomever they want), the Plaza plan is *not* separate from, and is indeed wholly dependent on, the Church Hill proposal being successful.

Thus, a thorough Mill Plaza review (traffic, wetlands, environmental impact, etc.) would include the related impact from the *coordinated application* for a large [Church Hill parking lot](#), adjoining the Plaza.

A hoped-for “long-term lease arrangement with our neighbor” has been touted by Sean McCauley in 2020 meetings, and Nov 2020 Church Hill application explicitly notes: “[A portion of the new parking lot is intended to serve another off-campus student housing facility proposed by others at 5 Mill Road \[Mill Plaza\].](#)” (p. 1)

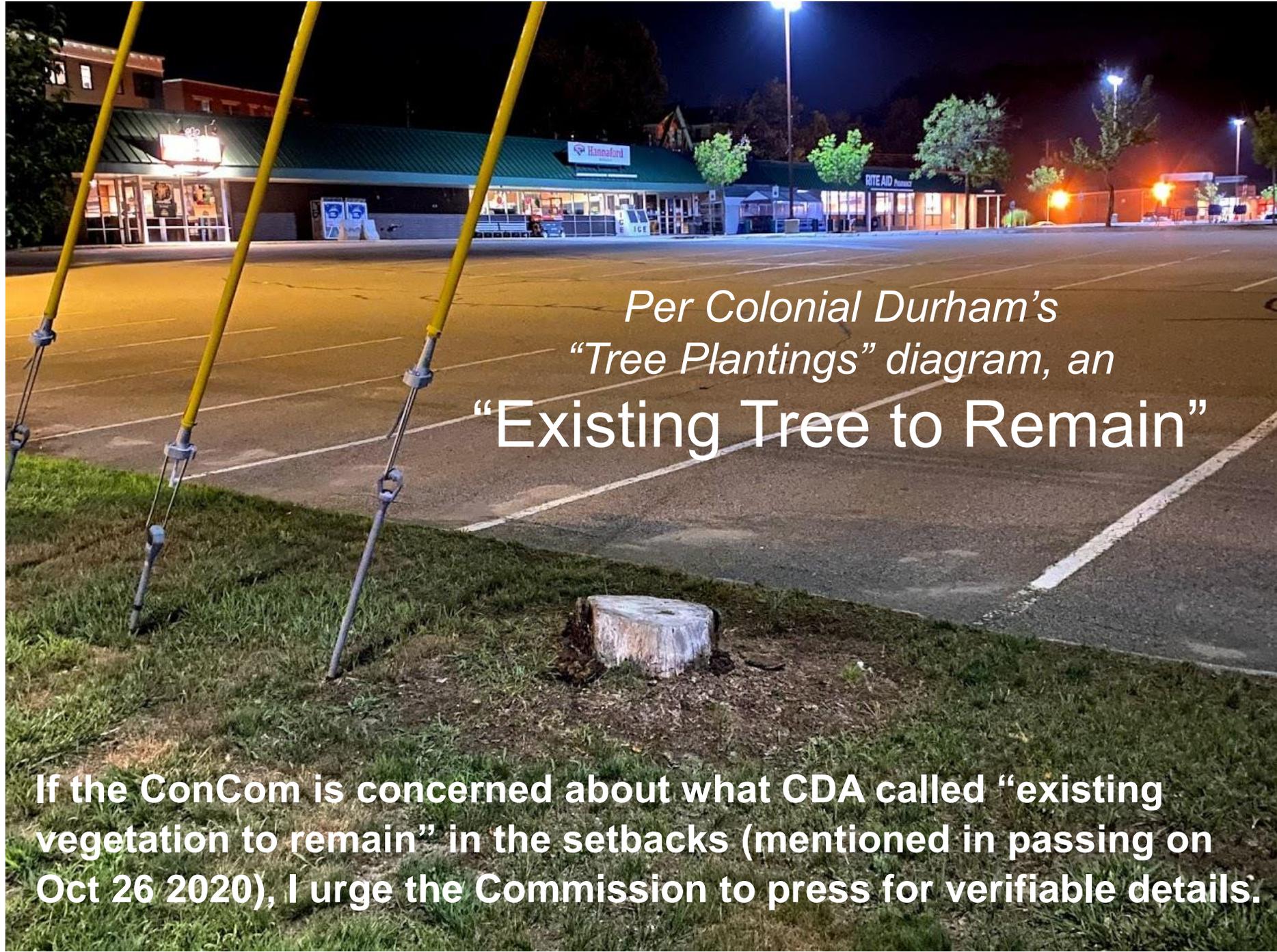


[Site Plan Rendering 1-2-20](#)



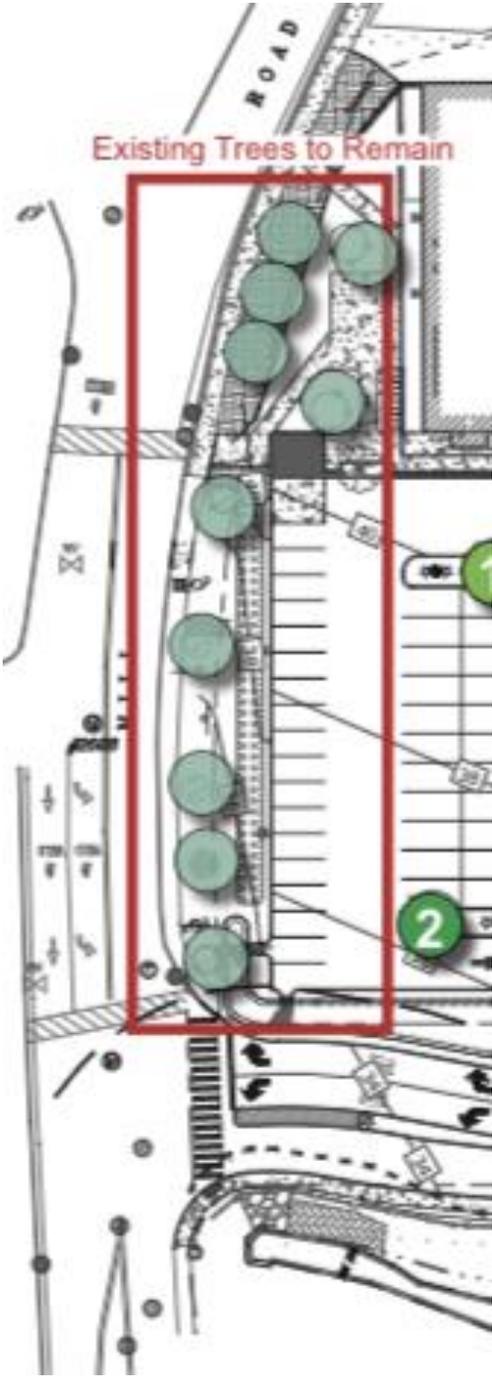
[Google Earth](#)

Town Boards should look beyond smoke & mirror obfuscations to consider the full impacts of *both* of these inter-connected applications, in combination, with *major deforestation upland of College Brook*.



*Per Colonial Durham's
"Tree Plantings" diagram, an
"Existing Tree to Remain"*

If the ConCom is concerned about what CDA called "existing vegetation to remain" in the setbacks (mentioned in passing on Oct 26 2020), I urge the Commission to press for verifiable details.



CDA should not be rewarded for its active mismanagement of the site as documented in CDA-submitted Streamworks report

[Mill Plaza Redevelopment and Relationship to College Brook: An assessment of existing system health & observations on possible future improvements, Ballestero & Ballestero, Streamworks, June 2018.](#)



Picture E - Current snow management, pushing snow over the bank down into the riparian corridor. Notice the trees are bent and dying, from this practice.

Bad behavior (as illustrated at left from Streamworks report) is no justification to violate the Wetland Setbacks & other aspects of Conditional Use zoning.

Improvements promised in the current site plan can and should be **integrated into a better, fully compliant plan.**

CDA's long-overdue promise to repair its own damage should not earn it approval of an otherwise non-compliant site plan – just as a destructive property owner promising finally to repair damage and neglect should not be granted the right to build a non-compliant McMansion on a tiny lot. CDA should fix its damage without reward – just as a teenager should clean up from a wild party without expecting a raise in allowance.

Lack of maintenance over decades does not justify celebration & reward over repairs

[Recommendations for Stream Improvements to College Brook 5-25-20 \(Rec'd 10-29-20\)](#)

Thomas P. Ballestero and Joel C. Ballestero 25 May 2020

“...recommendations for improving the College Brook ecosystem characteristics along the stream corridor adjacent to the Mill Plaza in Durham, NH....

- Remove trash and debris from the stream and floodplain....
- Continuous curbing”

It'd be great if CDA finally cleans up trash in Brook, restores curbing it damaged (& stops plowing into Brook). BUT these promises of **basic site maintenance** do not justify granting violations of wetland & shoreland setbacks with a non-compliant plan. They should be *required*, apart from a new site plan.



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