

March 19, 2021

Planning Board
8 Newmarket Road
Durham, NH 03824

RE: *Mill Plaza Redevelopment. 7 Mill Road. Continued review of application for site plan and conditional use for mixed use redevelopment project and activity within the wetland and shoreland overlay districts. Colonial Durham Associates, property owner. Sean McCauley, agent. Joe Persechino, Tighe & Bond, engineer. Emily Innes and Sharon Ames, Harriman, project designer. Ari Pollack, attorney. (Rick Taintor is serving as the Town's Contract Planner.) Central Business District. Map 5, Lot 1-1.*

Topic of this letter: Conservation Commission advisory on WCO and SPO Conditional Use Permit | Wetland setback to College Brook (3rd letter)

Dear Planning Board members:

At your February 24 meeting, members of the Conservation Commission presented a clear rationale for their advisory to the Planning Board regarding Colonial Durham Associate's Conditional Use Permit application relative to the Wetland Conservation Overlay District. *(See verbatim transcription, separately submitted.)* The Commission stated, as it did in its written recommendation, that the site plan did not meet the first of the four CUP criteria:

1. There is no alternative location on the parcel that is outside of the WCOD that is reasonably practical for the proposed use;

The Conservation Commission made clear that it is the particular nature of the site and the value of the particular wetland that underpins their decision.

The Commission's January 4th note to the Planning Board recommended that the proposal "be re-designed to restore a 75-foot vegetated wetland buffer with no impervious surface," with the exception of the entrance to the parking lot and the area designated for the gravel wetland at the [southeastern] corner of the site.

Those two exceptions are huge "gifts" to the applicant.

On the one hand, those two areas are significant encroachments into the setback and, in the former case, just beg for remediation. Ideally, the entrance would be moved north and the steep banks and erosion mitigated. Ideally, the disturbance required to install the stormwater management system, including the filter unit at the southeastern corner of the site, would not occur within the wetland setback—at all.

On the other hand, it would be difficult to redesign those areas due to (a) complications involving underground pipes and ownership (part Town, part UNH, part private) and (b) the site's topography (the proposed location may be best for the Jellyfish filter unit).

So the Commission's recommendation acknowledges feasibility. One might even say, it is not without mercy. But it also poses the question: **If we do not apply our zoning ordinance in this case, then when?**

Recommendation of the Planning Board and applicant response

Chair Rasmussen commented that the Conservation Commission did not suggest an alternative. But as the January 4, 2021 Conservation Commission minutes reflect:

“Consensus was ultimately reached that it’s not their role to design the project, but rather to state what needs to happen to protect the environmental resources.”

Indeed, it is up to the applicant and, arguably, the Planning Board to convince it, to do so.

The Board asked that the applicant return with a revised plan that responds to the Commission’s advisory. How does the site plan dated March 10, 2021 respond?

With the removal of only 13 of the 45 parking spaces located in the WCO setback, a slight (10-foot?) shift north of the driveway and a shrinkage of the parking median end caps. Parking on this plan remains in the WCO even in the least attractive location on the site.

On November 14, 2019, James Bubar sent a memo to Rick Taintor noting that,

“Given the scale of the plans I was unable to ascertain with any degree of certainty just how many parking spots infringes upon the WCOD but my uneducated eye, counted 42 spots. My desire to protect our waterways suggest this number should be, more correctly, zero (0) going forward....”

I urge the Board to focus its negotiation with the applicant relative to the WCO Conditional Use Permit on the following points:

- Remove all parking spaces from the wetlands setback
- Shift the driveway/“southern road” out of the setback, curving it north immediately after the entrance from Mill Road and then let it run straight across the site
- Add the resulting space between the road and College Brook to the brook’s buffer
- Include in that larger buffer a permeable surface pedestrian path
- Provide a detailed plan for vegetating that “increased natural buffer”

Parking spaces

One of the curious aspects of this proposal is that, as Conservation Commissioner Walter Rous pointed out at the February 24th Planning Board meeting, the number of parking spaces proposed has continuously been in flux, leading one to conclude that it is certainly open to negotiation. Whereas other applicants have sought waivers from the required number of spaces, until the March 10th version of the site plan, Colonial Durham was proposing an additional 73 spaces, over twenty percent more spaces than required.

I would particularly like to see removed the approximately 10 spaces within the WCO on the western edge of the site, at the southern edge of the rows of parking below Building A.

Apart from the improved environmental functionality, this is the part of the Plaza that most patrons will see. An aesthetically pleasing development, particularly with mature trees, encourages use and even money spent onsite, as research has proven. Establishing a Brook-

friendly entrance will also remind Plaza patrons that the town values protection of its waterbodies, including this tributary to the Oyster River.

On the other hand, parking on the southeastern portion of the parcel— still laid out within the WCOD—are perceived as least desirable, being the farthest from commercial uses. So why not remove ALL those spaces?

“Natural buffer” does not mean grass, herbicides, mowing, pesticides, or fertilizer...or, necessarily, large newly-planted trees that could interfere with sewer lines

The zoning ordinance that pertains to the project includes the following:

175-65. Performance Standards in the WCO District.

All buildings and structures shall be erected, altered, enlarged, or moved and all land within the WCO District shall be used in accordance with the following performance standards:

A. Naturally Vegetated Buffer Strip

A naturally vegetated buffer strip meeting the requirements of 175-75.1 of the Shoreland Protection Overlay District shall be maintained from the reference line of each wetland to the upland limit of the WCO District. Where existing buildings or structures or other site considerations preclude the maintenance of a vegetated buffer for the full width of the upland portion of the WCO District, a buffer of the maximum possible width as set forth in 175-75.1 shall be provided. No soil disturbance shall occur within fifty (50) feet of the reference line. Existing lawns within the upland buffer may be allowed to remain provided that a twenty-five (25) foot wide strip adjacent to the reference line of the wetland is not mowed and is allowed to reestablish naturally occurring vegetation. The application of fertilizers, pesticides, or herbicides within the buffer strip shall be prohibited except in conjunction with allowed agricultural activities.

Wetland setback and buffer for this particular site

The uses on this parcel are incontrovertibly more intense than on other developed sites along Durham’s waterbodies. Our land use regulations were established not with this specific site in mind but to protect public benefits more broadly.

But here we find—as the applicant has argued before the Zoning Board—an unusually large parcel with an unusually large frontage on a tributary to a waterbody threatened by eutrophication. Engineered stormwater systems may be excellent, but they must not be considered simply as replacements for, rather than complements to, natural buffers. Wetland setbacks and naturally vegetated buffers for College Brook are wholly appropriate.

Sincerely yours,

—Robin