

To: Durham Planning Board / From: Joshua Meyrowitz, 7 Chesley Dr / Aug 9, 2022

Will the Chesley Marsh *wetland setback* actually be respected?

“This whole [Toomerfs] project...is outside of the [wetland] setback.... I mean... it is out of the setback; it’s *well* out of the setback.” — PB member, July 13, 2022 deliberations, 9:58 pm, [video](#)



“I measure the retaining wall as being 77 feet away [from the wetland]. So if they go forward they either have to work within those 2 feet, push the retaining wall further away, or get an approval for the grading.... – Planner Michael Behrendt email to Joshua Meyrowitz, July 29, 2022, 6:17 pm

I write with some issues that I raised at the Conservation Commission on Monday, August 8, 2022.

Toomerfs’ engineer Mike Sievert and Toomerfs’ Attorneys Phoenix and Kieser have repeatedly asserted orally and in writing that the parking-lot project will not involve any work inside the wetland setback (75 feet from the Chesley Marsh located on the Andersen property at 8 Chesley Drive). Most Planning Board members have accepted that assertion with no questions asked, with some Board Members even enhancing the statement by claiming that the construction work will be “*well* out of the setback.”¹

There is, however, significant evidence to the contrary. At the ConCom meeting, Wetland scientist Mark West confirmed that the wetland markers (and the wetland itself) were still where they were when he first marked them. (See also [Letter from Mark West, West Environmental Inc. 8-8-22.](#))

¹ The Toomerfs team has also overstated the distance of their project from College Brook, as I have documented with a Town map in a prior submission to the Planning Board here: [“Toomerfs – Distances from College Brook,” Joshua Meyrowitz 6-16-22](#)

Unfortunately, however, Mr. West left the Council Chambers before I hoped to question him, via Commission Members, about the distance to the rock wall boundary from his closest flag marker (that is, whether his markers are *in* the wetland, at the very margin of the wetland, or at a slight distance from it. (Something that the Planning Board ought to find out.)



As I have informed Michael Behrendt: On July 9, 2022, Patty Andersen and a helper measured the distance from the closest blue wetland marker to the old rock wall boundary between the Andersen and Toomerfs properties, coming up with 18 feet to the Andersen side of the rock wall, or about 19 feet to the Toomerfs' side of the wall, as shown in one of the pictures that Patty sent to me (at left).

These measurements prompted Martha Andersen to write (in part) in [Martha Andersen 7-12-22](#) (see original letter for fuller context and formatting):

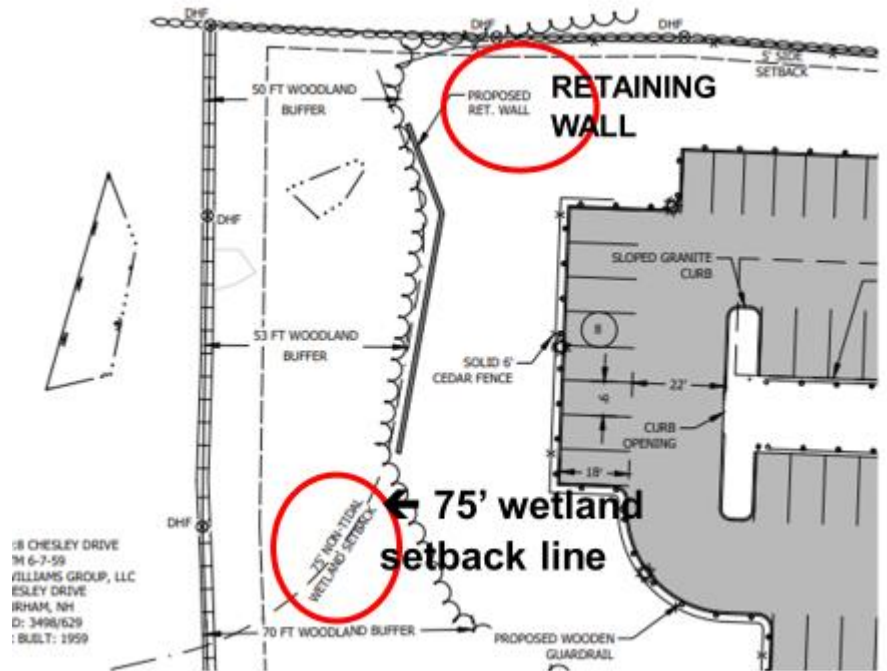
The posted May 5, 2022 site plans show only a 50-53 ft “woodland buffer” from the proposed retaining wall to the rock wall boundary that divides the Toomerfs’ property from ours.... $19 + 50 = 69$ feet, not 75 feet; $19 + 53 = 72$ feet, not 75 feet.... Even more to the point of misleading claims: In my 25 years of experience as a general contractor, it is inconceivable to me that there will be no disruption around the proposed retaining wall foundation. One cannot just plop a retaining wall into the middle of a “woodland buffer.” The surrounding land always gets disturbed.... With the Toomerfs not yet submitting any detailed renderings of the proposed 6-ft tall retaining wall and its relationship to the 20ft tall 2:1 slope – and the Planning Board’s refusal to press them to do so – we are all clueless as the specifics of construction plans. This points to applicant obfuscation and a failure of the Planning Board to practice due diligence.

Even after my written requests, Planner Behrendt declined to mention the Andersen letter and its concern in his Planner’s Reviews for the Board. However, on Friday, July 29, 2022, Mr. Behrendt did respond graciously (and after hours!) to my queries about relevant wetlands and my request that *he* scale off the submitted plans to estimate the distance from the proposed retaining wall to the Chesley Marsh wetland:

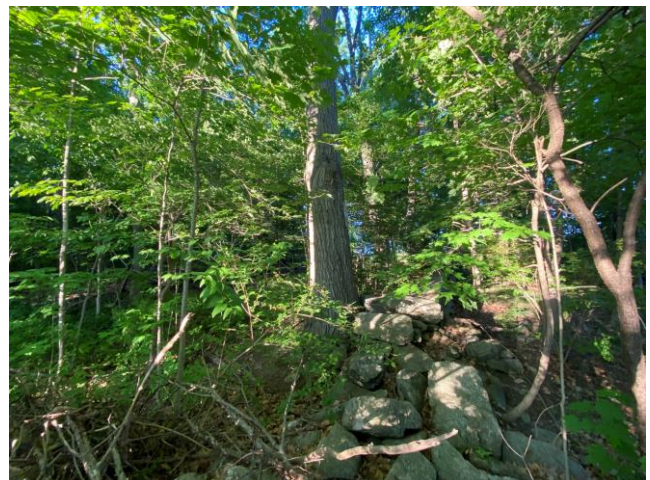
There are two wetlands. One on the property is under 3,000 square feet so it is exempt from the Wetland Conservation Overlay District. The other one is on the Andersen's property. They show only part of it but I understand it exceeds 3,000 square feet and is thus subject to the WCOD. The buffer in the CH zone is 75 feet. So they can't do any grading/work within 75 feet without getting a Permitted Use B or conditional use. I measure the retaining wall as being 77 feet away. So if they go forward they either have to work within those 2 feet, push the retaining wall further away, or get an approval for the grading.

As I showed the Conservation Commission, the Toomerfs' site plans indeed show the smallest of margins between the 75' wetland setback line and the proposed retaining wall.

Mr. Sievert did not dispute Behrendt's 77-foot from wetland estimate (nor the 2-foot construction margin from the setback), but he claimed that I and the contractor-family Andersens were wrong: that he *could* assemble the wall in the woodland buffer without infringing on the setback.



I brought a borrowed 2-foot long level with me to ask the ConCon (and now you) whether anyone who has examined the site believes that a 6-foot-tall concrete block retaining wall could, in actually, be built with only 2-feet of clearance on such as site (as in pics below):



When I returned the borrowed level to a builder neighbor, he kept yelling “*Where are the blueprints? How can the Planning Board accept that claim without seeing the blueprints for the construction of the wall?*”

I pass those basic questions on to you, as members of the Planning Board.

In the meantime, I queried Michael Behrendt by email on July 29, 2022: “Can you point to any retaining wall construction by Sievert or any other engineer, where the wall was placed in a woodland buffer with NO clearing, disturbance, root compaction on both sides of the constructed wall?”

Michael Behrendt replied: “*Not off hand. There certainly could be one.*”

These are questions that the Planning Board ought to require the Toomerfs team to answer.

Thank you for your attention.