



Londonderry Conservation Commission
Tuesday, August 9, 2022
Minutes

1 **Present:** Marge Badois, Chair; G Harrington, Vice Chair; Deb Lievens, member; Bob Maxwell, member;
2 Susan Malouin, member; and Mike Speltz, alternate member

3

4 **Absent:** David Heafey, member

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6 **Also present:** Amy Kizak, GIS Manager/Comprehensive Planner; and Officer Aprile

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8 Marge Badois called the meeting to order at 7:30 pm. She appointed M Speltz to vote for D Heafey.

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10 **ZBA Application Review – Pittore Bros. Paving – Map 13, Lot 99 – Eric Mitchell:** Eric Mitchell, from Eric
11 C. Mitchell & Associates, 106 South River Road, Bedford, NH, addressed the Commission. E Mitchell told
12 the Commission that he was before them back in April of this year for a Conditional Use Permit (CUP) on
13 this site that was going to go before the Planning Board. He went on stating that they have not been
14 before the Planning Board because after review of the plans, there were two variances granted in 2008,
15 which have lapsed, so they will have to go before the Zoning Board of Adjustment (ZBA) first. He
16 explained that the pavement to be removed and the landscaping that is proposed is the same on the
17 plans the Commission viewed in April. He discussed that one of the variances deals with the 50-foot
18 landscape buffer between the Commercial zone, which is the applicant's parcel, and the Rail Trail that is
19 zoned AR-I. He added that this variance was granted back in 2008. He reviewed two other variances they
20 are requesting as follows: they have a 100-foot Conservation Overlay District (COD) buffer from Shields
21 Brook there, and also from two other wetlands that are not part of the brook itself are 50-foot setbacks
22 to those wetlands. He said that there are some retaining walls and concrete walls that they are
23 proposing to take down and remove pavement as well. He mentioned that where they are removing
24 pavement they are proposing landscaping. He noted that they are also proposing a detention pond on
25 the plan to take care of some surface water before it releases back into the wetland system. He
26 reiterated that he is here before the Commission because the two variances that were granted back in
27 2008 have lapsed and they will be going back before the ZBA for these as they involve encroachments in
28 to the COD. M Badois asked what other site improvements mean on the application. E Mitchell replied
29 that other site improvements might be paving, some parking and some driveway, landscaping and the
30 detention pond. M Badois pointed out that there is nothing in the variance that limits other site
31 improvements to what E Mitchell just stated. E Mitchell commented that this is just a way to illustrate
32 what other improvements are shown on the plan, such as to allow pavement, parking to stay and a
33 detention pond in the buffer. He added that they are not proposing any other specific improvements. M
34 Badois asked what the squares on the plan that have SE in them mean. E Mitchell replied that denotes a
35 parking space with small equipment (SE). He mentioned that there is an existing house on the site that is
36 pre-existing, non-conforming, as it is residential in a commercial zone, but the entire site is being used
37 for truck parking and storage. He said that they are not really operating a business out of here *per se*,



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38 noting that the trucks come back here to be parked overnight. He added that this is very limited in the
39 winter months as this is a paving business, not landscaping or plowing. M Speltz asked if it would be a
40 problem if they recommended the ZBA place a condition to not use any salt. E Mitchell referred to note
41 number 12 on the plan sheet where it reads: "Salt use shall be restricted to minimal required for ice
42 melting," but said that if the Commission prefers no salt to be used, it would be considered by the
43 applicant. M Speltz thought that when E Mitchell presented to them before it was a DRC and not a CUP.
44 A Kizak stated that the DRC was back in July of 2021, and the CUP was in April of this year. M Speltz
45 mentioned that the Commission had a number of comments when the DRC was presented in July of
46 2021, and asked E Mitchell to address the comments. E Mitchell started with the Dredge & Fill Permit
47 noting that as they did more research it was granted as an after the fact permit. He said that the
48 secondary access, which is north to the one that is existing, was approved after the fact. He explained
49 that with this plan they are proposing to take pavement out of the buffer, with no additional work in the
50 wetland, and some landscaping. He stated that the white pine has been removed for the detention
51 pond. He noted that the CUP is still on the application to go before the Planning Board, which was
52 before the Commission in April of this year. He commented that the equipment is going to be stored in
53 the parking spots on the northeast side of the property in the winter. He mentioned that the detention
54 pond is not something that they can move further away from the Rail Trail because of the size of the
55 pond, but said that they did eliminate four parking spaces that were up against the Rail Trail. He said
56 that the plan has been updated and is before the Commission this evening. M Speltz asked for E Mitchell
57 to review the flood plain with the Commission as well because when he looks at the FEMA map it
58 appears as though that this parcel is the in flood hazard zone. E Mitchell replied that there was a flood
59 study performed by HL Turner Group, as some of the improvements to the pavement are right up to the
60 edge of wet, 100-foot buffer and flood plain. He noted that there was a question if any of the
61 improvements that had been done over the last couple decades had affected the flood plain. He
62 explained that the study by HL Turner showed that none of the improvements increased the flood levels
63 that are out there. He added that Stantec has reviewed the study and is in concurrence. M Speltz asked
64 if the HL Turner study addressed the question if there is an additional hazard by adding impervious
65 surface. E Mitchell replied that it has more to do with if any improvements to the site increased any
66 potential flood that could occur here, noting the answer was no. M Speltz clarified that he understands
67 the situation was not made worse, but the parcel still appears to be in the flood hazard zone. E Mitchell
68 responded that the parcel is in the flood hazard zone, but when the flood studies are done, they do not
69 go on site to do surveys, noting it is done with aerial imagery and additional information that can be
70 provided through The New Hampshire Department of Transportation (NHDOT). He said that if you look
71 at the flood map, quite a bit of the site is in there, but the question is what improvements on the site
72 currently or what is proposed, and how this will affect the flood levels. M Speltz asked if it would be
73 correct to say that the federal government got it wrong when you look at this in detail. E Mitchell replied
74 that he would not say wrong, because the studies are done to point out areas of concern in the flood
75 way, and anyone has the right to go back and do additional studies or more in-depth studies to verify
76 whether something is in the flood plain or whether any improvements are going to increase the flood
77 levels. He went on stating that the federal government did not do an underground survey up and down
78 Shields Brook to determine what the elevations are supposed to be. He said that they gave the



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79 underground survey information to the HL Turner Group, so they could do an in-depth drainage study
80 relative to the flood plain to see if it was going to raise the levels. M Speltz asked if it was correct to
81 state the property would not flood if there were a 500-year flood there. E Mitchell replied that he does
82 not know if the property would be flooded, but he can say it will not cause further flooding upstream or
83 downstream on other people's property. M Speltz commented that he believes he is asking a different
84 question, stating that he is concerned about a big flood here because after some point in time, the
85 water recedes and carries with it whatever is on the pavement to the detention pond and Shields Brook.
86 He mentioned that the use here involves vehicles used for paving and arguably the vehicles will have
87 petroleum oil lubricant contamination on them or dripping from them, which will be on the pavement.
88 He expressed his opinion that this is an inappropriate use of this property if there has to be so much
89 encroachment in to the buffer, as it is setting up a contamination hazard, even though the conditions
90 would be better than they are now currently at the site. E Mitchell discussed that there are some things
91 that have been done on the plans to help alleviate some of this concern noting the drainage is now all
92 going towards the detention pond where they did not have a detention pond before. He said that if
93 there is any spillage onto the pavement it will be draining down into the detention pond. He suggested
94 that they can put down mats to soak up any spillage and would be required to do a daily inspection to
95 make sure there is no leakage. He mentioned that when things are flooding with a lot of water, even
96 though there may be contaminants from this site and other sites, the amount of contaminants in terms
97 of density is very low because of the amount of water. M Badois pointed out that the equipment will be
98 sitting on the site over the winter with no one checking them, as they are not using the trucks. E Mitchell
99 commented that they can request inspections be done on a regular basis, even in the winter time when
100 they are not using the vehicles. He added that the trucks could also not be allowed to have full gas tanks
101 over the winter when they are being stored there as well. D Lievens asked if they would have fuel on the
102 site for the trucks to fuel up with. E Mitchell replied that he did not believe there is any fueling at the
103 site. D Lievens asked how it would work if the trucks were stored here with no fuel in the winter. E
104 Mitchell clarified that he meant the trucks would have 5 gallons of fuel left in them over the winter, so
105 they could drive off in the spring when they started using them again. B Maxwell interjected that would
106 not work, as the gas tank would fill up with water over the course of the winter, so the tank has to be
107 full or empty. M Speltz offered that this discussion is relative to the site plan and the task the
108 Commission has this evening is to provide advice to the ZBA on the variance requests. He suggested that
109 it is not a good idea to allow parking in the COD. M Badois agreed that it does not seem like a good idea
110 to have all those vehicles in such a vulnerable spot. M Speltz remarked that if E Mitchell can convince
111 the ZBA to grant the variances, then a set of conditions to minimize the risk could be discussed. He
112 asked if the Commission could advise parking to be allowed in the COD. G Harrington stated that he
113 believes the Commission cannot advise the ZBA to grant the variance. E Mitchell pointed out that they
114 are proposing curbing, so that the water from the parking lot will be directed to the detention pond and
115 will not be allowed to flow towards any of the wetlands. A Kizak commented that there are two variance
116 requests before the Commission this evening, stating one is for the 50-foot COD and the other is for the
117 100-foot COD, noting they overlap with each other. M Speltz asked if they are both based on the stream.
118 D Lievens asked for clarification on the screen for the buffers. A Kizak reviewed the buffers on the screen



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119 with the Commission. M Speltz made a motion to recommend that the ZBA not approve the variance
120 requests for both the 50-foot and 100-foot buffers because:

- 121 1. Based on the high risk of contamination from the added parking and existing parking area as
122 modified to both Beaver Brook and Shields Brook.
- 123 2. The concern about the placement of the detention pond so deep into the buffer.
- 124 3. The site lies within the flood hazard zone.

125 D Lievens seconded the motion. The motion passed, 6-0-0.

126 **Unfinished Business**

127 **Conservation Ranger:** Officer Aprile informed the Commission that due to all the power line work in
128 town, the ATV use has been low. M Badois mentioned that she saw three people riding dirt bikes
129 directly across from Sandy Brook that were crossing and heading towards the power lines. Officer Aprile
130 remarked that they are going down through the Nash property to FWebb. He explained that he was
131 informed of illegal dumping in Kendall Pond of an air conditioner and microwave, which he is looking
132 into. He added that hunting starts soon, so things will pick up. B Maxwell asked if Officer Aprile looked
133 into the issue of a tent by Sara Beth in the Musquash. Officer Aprile replied that he went out there the
134 next day and did not see any signs of a tent.

135 **Articles:** D Lievens commented that perhaps the Commission should take a break from writing articles,
136 if no one is interested at this time. She suggested that they can revisit this with new members at a later
137 date.

138 **Signs:** M Badois told the Commission that she is waiting for a call from Steve Young, so they can go out
139 to Kendall Pond and see where the sign would be for an estimate.

140 **New Business**

141 **Buffer policy:** M Badois mentioned that this was emailed to the Commission after the last meeting to
142 review. She asked if the Commission had any concerns or comments. M Speltz asked if the new Town
143 Planner had a chance to review this. A Kizak replied that the new Town Planner has not reviewed it yet.
144 M Speltz commented that he would want to wait until the new Town Planner has reviewed it before
145 signing it, but could go over any comments or concerns now. B Maxwell and G Harrington stated that
146 the document looked good to them.

147 **Monitoring:** M Speltz mentioned that he does not know who will be taking over for Mike Byerly, as he
148 has resigned, but the Mack property is due for monitoring. M Badois remarked that the whole
149 monitoring process might have to be readdressed. She asked if anyone had the spreadsheet that Mike
150 Byerly had started. Officer Aprile replied that he thought he had it in his email and would send it to her.
151 M Speltz reminded the Commission that they have signed up to follow the Land Trust Alliance Standards
152 & Practices, which require annual monitoring of all Conservation land. He went on stating that they can



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153 accomplish this using the aerial imagery, which is now updated frequently. He explained that they each
154 took a section of town and reviewed the imagery and came up with a list of others that needed a second
155 look. B Maxwell pointed out that M Byerly was also the Trailways liaison and he was forwarded a
156 concern that the Adams Pond Trail was getting overgrown. He commented that he went down and
157 cleared it. M Badois asked if there was any more flooding at Adams Pond Trail. B Maxwell replied that
158 there has not been. M Speltz mentioned that the Commission might want to designate a point of
159 contact, not necessarily have to go to the Trailways meetings, but so they know who to contact. B
160 Maxwell offered to be the point of contact. M Badois stated that she would send an email to Bob Rimol
161 at Trailways.

162 **South Road:** B Maxwell mentioned that there have been two drain pipes and riprap installed across
163 South Road near Kendall Pond. He said that they did two road cuts and put in a drain, which appears to
164 be about potential stormwater that was pooling in front of the new houses. He added that he was not
165 informed this was going to happen. M Speltz asked if this was in the highway right-of-way. B Maxwell
166 replied that it is close to the road by the guardrail and to the extent that it is just stormwater it is
167 probably okay. He noted that it was a contractor that did this, not the town. G Harrington remarked that
168 he believes the town already approved this as this is on NHDOT land, not Conservation land. He
169 mentioned that this subdivision has been eroding South Road and down South Road for three to four
170 years deteriorating the pavement. M Speltz asked if John Trottier, Director of Public Works and
171 Engineering, is aware of this. A Kizak replied that she will check with him and get back to the
172 Commission.

173 **Conservation Land:** B Maxwell said that Conservation Land in town is supposed to be accessible to the
174 public, but the driveway to Mack's south orchard on Adam's Road has been blocked all summer with
175 signs that state "No driving in mud season." He offered his opinion that this makes it very unfriendly for
176 the public to go in there. M Speltz pointed out that there is no right for wheeled vehicle access, but
177 public pedestrian access. B Maxwell noted that there is no where to park to access this. D Lievens asked
178 if there was any guarantee that there would be parking here. M Badois replied that parking was allowed
179 there in the past.

180 **Other Business**

181 **Minutes:** The Commissioners went over the public minutes of July 12, 2022. B Maxwell made a motion
182 to approve the minutes as presented. M Speltz seconded the motion. The motion passed, 6-0-0.

183 **Non-Public Session**

184 D Lievens made a motion to go into non-public session per RSA 91-A:3 to consider the acquisition, sale
185 or lease of real or personal property which for discussion purposes would be likely if the party or parties
186 interested are averse to the general community and consideration of legal advice. The motion was
187 seconded by M Speltz. The motion was passed by M Badois, D Lievens, G Harrington, B Maxwell, S
188 Malouin, and M Speltz with a roll call vote. M Speltz made a motion to leave non-public session. G



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189 Harrington seconded the motion. G Harrington made a motion to seal the minutes of the non-public
190 session indefinitely per RSA 91-A:3. D Lievens seconded the motion. The motion passed by M Badois, D
191 Lievens, B Maxwell, G Harrington, S Malouin, and M Speltz with a roll call vote.

192 **Adjournment:** G Harrington made a motion to adjourn the meeting at 8:46 p.m. M Speltz seconded the
193 motion. The motion passed, 6-0-0.

194 Respectfully Submitted,
195 Beth Morrison
196 Recording Secretary