

Peterborough Conservation Commission minutes
March 17, 2022, 6:30 p.m, Town House

Present: Jo Anne Carr, John Kerrick, Matt Lundsted, John Patterson, Francie Von Mertens; Tyler Ward, Select Board liaison; Akhil Garland, Lee Garland; Dewey Clark, Michael Kennedy, Bob Strong, Mike Tompkins

Eco Village Variance application

Francie Von Mertens explained that the Conservation Commission (ConCom) is required to submit preliminary comment to the Zoning Board of Adjustment prior to the ZBA hearing a variance application. Towards that goal members have some questions regarding the Eco Village variance application and impacts to the Wetlands Protection Overlay Zone (WPOZ) in the Village area. The ZBA will be hearing the application on April 4. The ConCom likely will submit a more substantive comment before the ZBA's final hearing.

All agreed that ConCom members would ask questions, and the applicant, Akhil Garland, would provide answers or seek additional information if needed.

Von Mertens said that further information is needed about specific existing impacts to the Wetland Protection Overlay Zone (WPOZ) as well as proposed new impacts—a request previously made in comments to the Planning Board .

Impacts to the wetland zone are stated by square foot, typically, along with a narrative rationale for the need for impacts, and efforts made to avoid them.

She said the ConCom also has requested plans that are color-coded by the applicant to indicate the WPOZ. Town staff has had to do the coloring by marker, including the plans submitted for the Variance. Without color-coding, WPOZ impacts are difficult for Planning Board and Zoning Board to determine impacts.

The Variance application seeks relief from town code 245-15(H) that prohibits structures and "construction activity" in the WPOZ, and states that the 50-foot buffer shall remain "naturally vegetated." The application requests permission "to utilize the existing 15 structures located within the current 50 foot wetlands buffer."

Details about the use of those 15 structures is missing. Members agreed that "to utilize" and to "repurpose" are terms that are too wide open given that the structures are located in the WPOZ.

The 8,157 square foot wetland size shown on the plans submitted for the variance was corrected recently. Members agreed that the plans need to indicate the corrected wetland size to determine if the town has jurisdiction over the wetland.

Members noted that the variance application states that the 15 structures were built when the town lacked a 50-foot buffer, however there was a 50-foot buffer at that time. It applied to wetlands larger than a half-acre. In 2011 voters increased protection to wetlands larger than 10,000 square feet (c. a quarter acre).

Jo Anne Carr said that the ConCom site walk a year ago December found uses and activities in both the wetland and buffer area typical of residential backyards, propane tanks included. "In the pure sense, restoration of a degraded wetland area would be most desirable . . . If the zoning board finds that the buildings need to remain, how are we going to improve the headwater system of this watershed from its current degraded condition?"

Von Mertens explained to Mr. Garland that when starting with a blank slate, a project applicant demonstrates that every effort to avoid impacts or, second best, to minimize impacts, has been made. If there are compelling reasons to permit permanent impacts, then mitigation is recommended that would more than replace wetland and buffer functions lost.

Carr suggested that what's needed is mitigation for the impacts of existing buildings, and clear knowledge of likely future impacts if the structures are permitted to remain. She said that it's not clear that removal of the structures would be more environmentally disruptive than the continuing impacts of the structures if permitted to remain.

Matt Lundsted said, in that context, that he'd need to know what the functions and values of the wetland and buffer were before they were impacted. "Are we protecting four rocks with a puddle in the middle or are we protecting wildlife, habitat, flood storage, all those points? We've not seen that kind of discussion." If any structures are permitted to remain, he said a functional analysis would be needed to know what buffer functions would need replacing.

John Patterson added that it's not known what added disturbance there would be if the decision is to remove structures.

Mr. Garland, having made notes of concerns raised, presented slides that gave a sense of the Village, including the 15 structures, and addressed the concerns raised.

As background he said he hired a wetland scientist 16 years ago and was told there was no buffer zone. "Plans were put forth for septic and structures and they were approved by the town." Thereafter, after permitting by the town, heavy investments were made.

He said the six cottages permitted for Well School staff housing are listed as "dwellings" by the town, and are taxed as such, and that sheds built for storage are less than 120 square feet, the size requiring a building permit.

He said, as Matt Lundsted suggested, the wetland area is manmade drainage, the result of longtime farming and clearing fields of rocks.

He showed slides of the three cottages and 12 other structures that were built where he was told there was no wetland buffer. He mentioned heat lines from a boiler building and septic lines—all with permits. He said that he thought that to rip out "half of a beautiful village," with great disturbance to the area, would be "horrific."

He said the three cottages, proposed to be single-family houses on subdivided individual lots, would remain on existing community septic placed in common open space.

He said he would like to "repurpose" the existing sheds that are in the WPOZ—as shared office space, yoga studio, for Zoom meetings, and the like, under control of the Homeowners' Association. He mentioned propane and heat pumps as possible heat sources for the structures.

Asked by the applicant about mitigation for buffer impacts, Lundsted gave examples of creating a wetland or enhancing degraded buffer functions elsewhere with native plantings or by removing invasive species.

In an effort to avoid further disturbance to the wetland overlay, Mr. Garland showed plans to add a second story to a cottage that didn't meet the town's 600 square foot minimum size—a minimum that Carr said might be removed by town vote in May.

Von Mertens said that maintaining existing footprints of preexisting structures in the overlay was a common ZBA requirement if nonconforming structures are allowed to remain in an overlay zone. She said town boards look for efforts like that by an applicant to avoid, minimize, or mitigate impacts to the town's wetland overlay.

Discussion ended, John Kerrick thanked all for their attendance.

Minutes

February minutes were approved

Members

Bob Strong was invited to join the Commission as an alternate. He said he would look on that favorably, even after Carr warned it likely would be a "life tenancy."

Preliminary Comment to ZBA regarding Eco Village variance application

Members digested the conversation with Mr. Garland into a draft comment to the ZBA relating to the Eco Village variance application, including, broadly:

Option A: Removal of structures (all or some), related impacts to the WPOZ, and site restoration thereafter.

Option B: Maintaining structures (all or some), and mitigation options for WPOZ functions and values lost. Towards that end, a functional analysis of functions and values of the area before impacts is needed.

Also needed:

Accurate size of relevant wetland, as requested in the past, to determine whether the town has jurisdiction.

WPOZ color coded on plans to clearly indicate impacts, as requested in the past.

Square footage of existing impacts.

Proposed uses of structures to better determine likely future impacts if allowed to remain, as requested by the Planning Board.

Lundsted, summing up the process, said that the Commission is at the information gathering stage. A more detailed assessment and comment will follow.

The meeting adjourned at 9:07 p.m.

/fvm

Attached: Letter approved and sent to the Zoning Board.

March 28, 2022

To: Peterborough Zoning Board of Adjustment

From: Peterborough Conservation Commission

Preliminary comment regarding the Eco Village variance application

Variance applicant Akhil Garland met with the Conservation Commission March 17 as recommended by variance protocol. Members explained that the Conservation Commission (ConCom) will submit preliminary comment to the Zoning Board of Adjustment based on the March 17 meeting. Also required by variance protocol, the ConCom will submit more substantive comment prior to the ZBA's final hearing on the variance application.

Mr. Garland seeks relief from the town's Wetland Protection Overlay Zone **245-15H. Wetland Buffer.** For all wetlands larger than 10,000 square feet, 245-15H requires that a 50-foot wetland buffer remain "inviolate" and "naturally-vegetated," and it prohibits "construction activity" in the buffer.

The application seeks relief in order "to utilize" 15 pre-existing structures in the WPOZ. Three of the structures were approved by the ZBA as accessory cabins for Well School staff accommodations. If permitted to remain in the WPOZ, the applicant intends to utilize the three cabins as single-family dwellings on individual +/-quarter-acre lots that are not indicated on the submitted plans. The other 12 structures would have varying uses, as yet unspecified.

ConCom members communicated to Mr. Garland that the following is needed:

- 1. Size of wetland.** Plans submitted to town boards must indicate the size of any wetland in the project area. On the plan submitted with the variance application, size of the wetland that is relevant to the application is shown as 8,157 square feet, smaller than the 10,000 square feet required for town jurisdiction. That size was submitted to the Planning Board in the early subdivision plans, and was determined to be inaccurate.

The Conservation Commission again requests accurate size of the relevant wetland.

- 2. Color-coding.** The town requests that all plans submitted that include wetlands be color-coded by the applicant to indicate the Wetland Protection Overlay Zone (WPOZ). Without coloring, impacts to the WPOZ are difficult to determine. (Town staff hand-colored the plan after it was submitted.)

The Conservation Commission requests that ZBA members be provided color-coded plans to clearly indicate WPOZ boundaries.

In its preliminary discussion, often characterized as a view from 10,000 feet, ConCom members suggested two broad options.

Option A. Remove all structures – requiring an assessment of environmental impacts to the WPOZ by their removal. (If Option A is the decision, a wetland and buffer restoration plan would be needed.)

Option B. All or most structures remain – requiring mitigation for wetland and buffer functions permanently lost by their presence. Mitigation examples include creating a wetland elsewhere, or enhancing wetland and buffer functions elsewhere – ideally in the immediate subwatershed.

To assist weighing options, members cited the need for a functional analysis of the original, pre-impact wetland + 50-foot buffer. Peterborough's wetland code under

definitions describes "FUNCTIONAL VALUE" as an analysis of the functions and values of a "wetland ecosystem."

Town code **233-52 Conditional Use Permit for Uses within the Wetland Protection Overlay Zone** requires an analysis of functions and values as follows: "wildlife habitat, stormwater control, groundwater recharge, sediment entrapment, pollution removal, and flood control are of particular concern, but all functions must be addressed."

A functional analysis is to be done by a certified wetland scientist "or other qualified person(s)" to insure the following code requirement: **"No net loss of buffer functionality."**

It's to be done before there are WPOZ impacts. Doing one retroactively is not ideal, but is possible when done by qualified individuals.

Concerns were stated about likely additional impacts to buffer functions of permanent single-family homes on subdivided lots v. cabins for rotating school staff. Examples: Lawns, barbeque areas encroaching further in the buffer; propane tanks for heated structures located in the protective buffer.

Mr. Garland noted that one cabin is smaller than the town's current minimum 600 square feet of living space, and his intent is to "go up, not out," adding a second story to maintain the cabin's footprint with the intent of avoiding further encroachment into the buffer. Members agree that maintaining existing footprints is a common condition when town boards grant permits.

Coming down from the preliminary view from 10,000 feet, determining uses of the structures will help assess likely future impacts, important in weighing Option A and B, or a hybrid between the two.

The Planning Board has requested those uses be specified. Logical questions: Will any uses add more propane tanks to the WPOZ? Can structures be moved outside of the WPOZ?

The ConCom submits these preliminary comments relating to the first two variance criteria, loosely defined as public interest and intent of the ordinance.

Respectfully,

A handwritten signature in cursive script that reads "Francie Von Mertens".

Francie Von Mertens, co-chair *for the*
Conservation Commission