

November 26, 2017

Re: Colonial Durham's Latest Request

Dear Members of the Durham Planning Board,

As a citizen who has been following Planning Board procedures for the last 17 years and have closely following the Mill Plaza Redevelopment Project proposal/submission process over the last several years, I remain perplexed and troubled by this latest CDA request. On their Request for Pre-Application Review, they have marked at X by Conceptual Consultation. Note that there are only two choices (Conceptual Consultation or Design Review) and the applicant is asked to choose one. Yet in the NOTE at the bottom of the application, the applicant indicates that this application is "paired with, and part of, a request for an extension of the design review vesting clock." They also note that "this submission shall be considered a part of the Mill Plaza Redevelopment design review proceeding last considered by the Planning Board on June 14, 2017." In essence, they are asking the PB to ignore the fact that the Design Review was CLOSED on June 14, 2017 (at the applicant's request) and that our regulations (guided by State Law) specify a 12-month vesting period, triggered by the close of the Design Review.

While CDA does not acknowledge that the design review was formally closed (at their request) and that they are now requesting it to be reopened 5½ months later, that is exactly what they are doing. *This is highly irregular.* In all my years of observing Planning Board procedure, I do not recall such a request. I also note that the Settlement Agreement states that the Mill Plaza Redevelopment Project will be held to all normal Planning Board procedures. (Note Settlement Agreement item 5.a states: "The final approval must [be]...subject to **normal planning board review.**") I do not believe that either request (in essence, to reopen a closed Design Review 5½ months later after it was formally closed or to alter the vesting clock) are part of normal Planning Board procedures. One, in fact, could argue that such a request jeopardizes the validity of the Settlement Agreement.

Beyond that, I find the request troubling for these additional reasons:

If this is a Conceptual Consultation (preliminary) as noted on our Agenda, that implies they are submitting a new plan, which by definition must be general in nature (i.e. "no design or engineering details"). If indeed this is a Conceptual Consultation, then they lose their vesting, which would impact, for one, the parking they are proposing underneath several residential buildings. Our new ZO regulations make clear that this is not permitted. Loss of vesting, in my opinion, would be a good thing.

If this is a Design Review, in which they wish to receive feedback from the PB on "design and engineering details," then indeed they are requesting REOPENING a CLOSED Design Review. I don't see anywhere in our Town or State Regulations that permits such a procedure, nor do I see any authority given to the PB to alter the State-regulated 12-month vesting period. Additionally, a Design Review must notice abutters, which did not occur.

In summary, I see the current request by CDA to be highly irregular (i.e. outside of normal PB procedures) and possibly illegal. I hope the Planning Board will carefully consider the issues I raise before agreeing to allow this request to move forward. Given the controversial nature of this proposal, the PB would be wise to make sure that it fully understands the legal implications and ramifications of whatever decision it makes. I would hope that the PB decision will be well grounded by our Town regulations and State Law.

Respectfully Submitted,

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