

Mill Plaza Redevelopment

November 27, 2017

Dear Durham Planning Board members:

I ask you to carefully scrutinize Colonial Durham Associates' ("Developer") request for an extension of its design review vesting period from June 2018 to November 2018. This unusual request is made on the heels of several other procedural irregularities that have characterized Developer's interaction with the Town of Durham's administration. I know that you are mindful that, at some point, the accumulation of these procedural irregularities threatens to undermine the legitimacy of the planning process as a whole.

As you know all too well, for more than three (3) years, the Town of Durham has engaged in exhaustive public discussions with Developer that demanded and used considerable town resources. Significant administrative, legal and community resources, which could have been deployed to projects that would benefit the town, were instead allocated to Developer.

After indicating a willingness to follow guidance provided by the Mill Plaza Study Group, Developer submitted a series of plans that ignored altogether the Group's findings.

Developer submitted a series of plans that continually ignored extensive input by Durham residents that was provided at meetings over which you presided.

Developer repeatedly proposed excluding the plaza's highest value property, which houses anchor tenant, Hannaford, as well as Rite Aid, from the redevelopment project.

Developer also submitted a series of plans that appeared not to comply with the court-approved settlement terms reached between Developer and Town of Durham. It is worth noting that the Developer's current request to extend its vesting period until November 2018 would require a departure from 'normal Planning Board procedures' that the settlement requires.

Developer has submitted a series of plans that threaten abutting family neighborhoods and inconsistent with Conditional Use requirements of the Zoning Regulations.

In late 2016, Durham's Town Administrator also took the unorthodox step of interrupting an ongoing public process before the Planning Board in order to begin a 6-month long series of negotiations with Developer that took place outside of the public view. Consequently, residents were excluded from the process for nearly the entire first half of 2017 and public exchanges between residents, the Planning Board and Developer were precluded.

In contrast to the Developer's intransigence, Durham's town administration bent over backward to accommodate Developer, even taking the unusual step of inviting Developer to participate in Durham's Land Use Forum on May 13, 2017.

On June 14, 2017, after six months of private talks, the Town Administrator took the unusual step of reintroducing the redevelopment project to the public. He characterized

the proceedings to date as “abnormal” and went on to introduce a consultant who noted the virtues of the latest redevelopment plan and urged citizens to reconsider the plan.

Curiously, on the very same date that the Town Administrator reintroduced the redevelopment project to the public (June 14, 2017), Durham’s Planning Board and Developer moved and agreed, respectively, to close the preliminary design review and the public hearing on the matter.

Now -- more than five months later -- Developer submits an altogether different new plan, calling for “Conceptual Consultation Only” in its Request for a Pre-Application Review. Conceptual consultation would appear to require Developer to forego its design review vesting clock, yet the developer has also made what would appear to be an extraordinary, and potentially unlawful, request to extend the vesting period.

Since Developer’s paired requests would appear to violate both the settlement and New Hampshire State law. I would encourage you to seek outside counsel regarding their legality and to reject extending the vesting period if appropriate.

Sincerely,

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