

MITCHELL MUNICIPAL GROUP, P.A.

ATTORNEYS AT LAW
25 BEACON STREET EAST
LACONIA, NEW HAMPSHIRE 03246
www.mitchellmunicipalgroup.com

WALTER L. MITCHELL
LAURA A. SPECTOR-MORGAN
NAOMI N. BUTTERFIELD
JOSEPH H. DRISCOLL, IV

TELEPHONE (603) 524-3885

October 6, 2021

Rick Taintor, Community Planning Consultant
Town of Durham
8 Newmarket Road
Durham, NH 03824

Re: Mill Plaza Application

Dear Rick:

You have inquired as to whether the most recent Mill Plaza application complies with paragraph 1(d) of the Settlement Agreement's which provides:

The Revised Application will provide for proposed buildings and vehicular roads outside of the shoreland and wetlands buffers such that variances from town ordinances are not required and the buffers are maintained by the property owner.

As I opined in a letter to Todd Selig dated April 6, 2020, a variance is relief granted by the zoning board when a use is not permitted by the zoning ordinance. A conditional use permit is not a variance—it is a use permitted by the ordinance under certain conditions. Therefore, the need for a conditional use permit does not violate the Settlement Agreement.

Further, I have reviewed my notes from the Settlement Agreement discussions. Those notes indicate that the plan was to pull the buildings out of the buffer entirely; but that parking and roadways would remain in the buffer. I have a note that there is to be a professional stormwater plan to address runoff into the water bodies and that even if some parking/roadways remained in the buffer, there would be less total paving than exists now and that the pavement would be moved further back from the water.

You have also inquired as to the conservation commission's role in the planning board's review of conditional use permits in the WCOD. Section 175-61(B) provides that:

The Planning Board shall approve a Conditional Use Permit for use in the WCOD only if it finds, with the advice of the Conservation Commission, that all of the following standards have been met . . .

Advice is not defined in the Ordinance, so we turn to the dictionary for its meaning. Merriam-Webster defines "advice" as "recommendation regarding a decision

Rick Taintor, Community Planning Consultant
October 6, 2021
Page 2

or course of conduct.” To “recommend” is “to say that someone or something is good and deserves to be chosen.” There is nothing binding about a recommendation or advice. Therefore, while the planning board must consult with the conservation commission and consider its comments regarding an application for a CUP in the WCOD, it is not bound to follow those comments.

Please let me know if I can be of additional assistance. Thank you.

Sincerely,



Laura Spector-Morgan
laura@mitchellmunigroup.com

cc: Todd Selig, Town Administrator