

January 27, 2021

Town Council
Planning Board
Economic Development Committee
8 Newmarket Road
Durham, NH 03824

RE: Mill Plaza Redevelopment. 7 Mill Road. Continued review of application for site plan and conditional use for mixed use redevelopment project and activity within the wetland and shoreland overlay districts. Colonial Durham Associates, property owner. Sean McCauley, agent. Joe Persechino, Tighe & Bond, engineer. Emily Innes and Sharon Ames, Harriman, project designer. Ari Pollack, attorney. (Rick Taintor is serving as the Town's Contract Planner.) Central Business District. Map 5, Lot 1-1.

Topic of this letter: Setting the record straight on Planning Board review duration

Greetings,

Colonial Durham Associates' ["CDA's"] attorney Ari Pollack's letters to the Planning Board dated January 8 and January 19, 2021 appear to express concern about the duration of the Mill Plaza site plan review. In addition, Town staff and committee members who may not have followed the ins and outs of the review have at times implied or expressed similar frustration. Frustration is understandable, but some have also given the impression that the review has dragged out primarily due to public input that is unduly extensive or perhaps simply reflecting general anti-development positions.

Had the Mill Plaza application been brought to a larger community, even just the size of Portsmouth, some of the burden would have shifted from the Planning Board to more numerous permanent Town staff, perhaps even including experts dedicated to the specific aspects of the project. In that case, the process might have been shorter. Given the prominence and complexity of the project, one could argue that no one familiar with Durham should have expected a swift review.

Unfortunately, agendas for the Planning Board have often been so packed that the periods reserved for the Mill Plaza public hearings have often not started until 10pm or later, when all participants are tired and both attention and time is short. In addition, the Board has simultaneously had on its plate two other intense projects.

On this point I do agree with the applicant: Meetings dedicated to this complex project may help all parties. It might be wise, in fact, for the Board to hold some focused discussions to guide the applicant toward revisions that could be on the table during deliberation—keeping the public hearing open so residents could respond at a later date.

But also for the record: Over the six and a half years since the submission of an application for Design Review (in September 2014), Colonial Durham Associates has numerous times requested, and been granted, postponements—some repeatedly. Studies and other information have not always been provided when promised, or have been presented in inadequate form. Questions have been asked and not answered, leading some community members to repeat the requests.

No site walk was even discussed until two years into the formal review, and when it finally took place last month, the applicant had not even provided flagging for the back corner where woods would be razed and a hill would be excavated. Blame for the perfunctory site walk's delay and scope limitations may also lie with the Planning Board, which persistently refused to discuss what it should look for on a site walk and then constrained the actual site walk to avoid views from abutting properties, including Main Street's Historic District and residential neighborhoods.

Furthermore, the Planning Board allowed the applicant to set the timetable for discussion topics. While that may be a reasonable approach in general, it has led to what some might at best call a challenge. The topic with greatest potential impact is the layout and size of structures, the very heart of a site plan, yet CDA sought consultation with the Conservation Commission on the pivotal issue of encroachment into wetland and shoreland setbacks so late in the game—just last November—that substantive concerns might be ignored.

That Hannaford, CDA's anchor tenant, was not "on board" with the site plan *only came to light four years into the review*, despite pressing by the public, if not the Board, to confirm that negotiations with Hannaford were bearing fruit. The apparent failure to notify Hannaford early on, let alone obtain its blessing, has been a major contributor to the duration of the review. Indeed, in November 2018 the Planning Board requested a hiatus to allow the applicant to return with a plan substantively agreed upon by Hannaford.

That hiatus extended a full year. Notably, CDA's return to the Board may even have been premature, since Hannaford only conditionally approved the plan, contingent upon events yet to happen, if at all, i.e., approval for a Conditional Use site plan on an adjacent property.

Indeed, the October 28, 2019, "Updated Letter of Intent" submitted by Mr. Pollack states (referencing a proposal to enlarge a parking lot at the abutting 19 Main Street),

"To link the two projects/properties, CDA anticipates a Condition of the Site Plan Approval that would require and incorporate long-leasing of the Toomerfs parking area for the benefit of the proposed apartment residents at the Mill Plaza."

Mr. Pollack claimed (according to minutes of the November 13, 2019 Planning Board meeting) that the major design changes were "a response to concerns from the Board and members of the public." Mr. Pollack was duly representing his client, but I beg to differ.

The failure to get Hannaford on board led directly to design #9 (dated October 22, 2019)—a dramatically different site plan from #8. Design #9 reduced the number of beds from 330 to 258, relocated buildings, and increased both building heights and the number of parking spaces. But per Hannaford, residential parking must be located offsite.

Thus, compounding the length of the review is what appears to some as an error in CDA's judgment in ceding control over the site to its tenant through its long-term lease (which may possibly have been renewed while CDA had development in mind, given the termination date of the year 2059).

Again: While the terms of the contract between CDA and Hannaford are those of landlord and tenant, and thus not under the purview of the Planning Board, they nonetheless have had a significant impact on the duration of the review.

Let's be fair.

To blame the public, who have rightly criticized poor features of plan after plan, asked questions that should help the Planning Board in its deliberation, and at times offered suggestions for improvements, would seem to be grossly unfair and inaccurate. Yes, some of us have been windy; some of us have repeated our concerns (sometimes out of a sense that they weren't heard—an unfortunate but common constraint of the one-way public hearing process).

Mr. Pollack continues:

"In short, the pending application has evolved into a collaborative work product that has been evaluated, reviewed, discussed and critiqued by many persons, having many perspectives and carrying many allegiances, across multiple and continued public meetings. Given all of the above, and the robust nature of the review conducted to date, CDA respectfully requests that the Planning Board work expeditiously to conclude the Board's input sessions, close the public hearings, deliberate the merits of the submissions and plans, and determine the applications."

To claim that the "pending application has evolved into a collaborative work product" reflects just one perspective. Little *substantive* change has been made by the applicant. Minor collaborations, such as exterior materials color, and forced choice options about architectural design, certainly cannot seriously be considered in this light, particularly where few recommendations from the community were ever incorporated.

On the other hand, Durham has a track record of successful collaboration between developer and the community. Substantive collaboration has helped revitalize downtown Durham: Madbury Commons, the Orion student housing on Main Street, and Pauly's Pockets all evolved into better projects as a result.

Conclusion

Colonial Durham Associates is asking you, in effect, "to wrap things up" on its time schedule.

On the other hand, the community relies on you to take the time you need—and to request the information you need—that will allow you to make a considered evaluation of the plan as presented and eventually determine whether it meets all relevant land use regulations.

Sincerely yours,

—Robin