

COMPARISON OF SITE PLAN REGULATIONS: MILL PLAZA VS CURRENT “STANDARD”

May 18, 2021

Planning Board
8 Newmarket Road
Durham, NH 03824

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. ...Central Business District. Map 5, Lot 1-1.

Dear Members of the Board,

As you know, the Colonial Durham Associates’ Mill Plaza application is “vested” in the land use regulations that, put simplistically, were in effect at the time the application was submitted for Design Review in the fall of 2014:

- Site plan regulations dated September 9, 2015 (noticed in 2014, but not wholly adopted)
- Zoning ordinance dated April 15, 2014

It is my understanding that applicants may choose to avail themselves of subsequent changes to the regulations but is not legally constrained to do so. However, subsequent changes reflect the will—and values—of the community, as knowledge and understanding evolve and experience informs our perspectives on what we want for our future.

Hence, I urge the Planning Board to consider which changes may be appropriate to incorporate as Conditions of Approval. Given that the application is for a Conditional Use Permit (indeed, for four conditional use permits, as one may at times need reminding), that would seem a reasonable request. After all, section 175-21 of the zoning ordinance, Purpose of Conditional Use Permits, states:

...Further Conditions may be placed on the Conditional Use Permit by the Planning Board to ensure that the Conditional Use will have a positive economic, fiscal, public safety, environmental, aesthetic, and social impact on the town.

In this light, a comparison of the Mill-Plaza-only and our “standard” land use regulations proves fruitful.

I have focused primarily on landscaping and environmental elements of the proposal, particularly College Brook. You could undertake the same exercise, but I provide for your convenience (imperfect) comparisons for the following sections of Part III of the site plan regulations, i.e., the standards, for:

- **Article 3. Construction Practices Standards**
- **Article 5. Landscaping and Screening Standards**
- **Article 15/16. Stormwater Management Standards**

On the next two pages I highlight what I see as key differences between the two versions.

Separate documents compare each of the Articles more completely and, I hope, will serve as a tool during your discussions and deliberations. For official reference, of course, refer to the documents posted on the Town of Durham website.

Sincerely yours,

—Robin

KEY DIFFERENCES: CURRENT “STANDARD” VS MILL PLAZA

Article 3. Construction Practices Standards

- Section 3.1 Commencement—“No site work, grading, nor removal of vegetation (except that necessary to establish the items that follow) shall commence [ADDITION: until limits of clearing are established]” ...
- 3.2.1—[ADDITION] “...Equipment and storage will be excluded from entering into shoreland and wetland setback areas.”
- Section 3.4 Hours of Activity
3.4.1 ... [ADDITION] “For blasting, chipping of stone, and use of hoe or rock hammers, hours are restricted to 9:00 a.m. to 4:00 p.m. Monday through Friday”
- Section 3.6—[ADDITION] Protection of Trees and Other Vegetation During Construction
- 3.7.2 If the development site is in close proximity to a waterbody, all stockpiles, concrete washout areas, chemicals, fertilizers, hazardous materials, etc., shall be located as far from the waterbody as possible and at a minimum of 50 feet away [ADDITION>>] (75 feet in the case of a wetland setback area).
- 3.7.3—[recycling encouragement emphasized]

Article 5. Landscaping and Screening Standards

- numbers of sections vary; see original
- 3-year [versus 2-year] tree maintenance plan [5.11.2 and 5.10.1]
- 3-year [versus 2-year] performance bond / letter of credit to cover maintenance after the time of planting.” [5.11.9 and 5.10.4]
- parking lot islands and median widths “...shall be a minimum of nine feet in width [versus “at least 6 feet wide”] or as necessary to provide adequate room for vegetative root growth and in order to not to interfere with access to vehicles, lines of sight, pedestrian travel, or the long-term health of the vegetation....” [SEE 5.8.12 FOR TEXT]
- screening with evergreen shrubs and/or trees that will grow to a minimum height of 6 feet [ADDITION>>within 3 years]. [5.9.3]
- “Plant material and landscape maintenance procedures shall [versus “preferred”] incorporate water conservation techniques (i.e., xeriscaping)...” [5.3.8 and 5.3.7]

[continued on next page]

- ADDITION re: topsoil, i.e., “Areas disturbed during construction that otherwise will not be occupied by one of the above structures or elements shall be replaced with a minimum of 6 inches of suitable topsoil and replanted as appropriate.” [5.3.1]
- ADDITION re: goals of low-impact design techniques must achieve [5.6.8]
- ADDITION: Passive heating and cooling. [SEE 5.12.2 FOR TEXT]
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- ADDITION: Passive heating and cooling. [SEE 5.12.2 FOR TEXT]
- Low Impact Development (LID) techniques: long list of goals [SEE 5.6.8 FOR TEXT]

Article 15/16. Stormwater Management Standards

- First note: “Standard” article is number 15; Mill Plaza article is numbered 16.
- requires a stormwater management plan: “Standard” 15.2.2—Applicants for developments and redevelopments that disturb 5,000 [versus 10,000 for Mill Plaza] or more square feet
- 15.2.3—[ADDITION] “The Planning Board reserves the right to require any development that disturbs less than 5,000 [versus 10,000] square feet... The Planning Board may solicit input from the Conservation Commission in making this determination, at its discretion.”
- OMITS 16.1.3. “If the applicant submits an approved NHDES Alteration of Terrain (AOT) permit, the Town does not then require a Stormwater Management Plan...”
- 15.4.1 Drainage Analysis—[ADDITION] ... “The rainfall amount shall be obtained from the Northeast Regional Climate Center – <http://precip.eas.cornell.edu>. The analysis shall include extreme precipitation table as obtained from the above referenced website.”
- 15.5.3 Redevelopment Criteria—[in “standard”] versus 16.4.3 Redevelopment Project Requirements—[in Mill Plaza] [check entire subsections]
- 15.5.4 Off-Site Mitigation [ADDITION of entire section]
- 15.6.4 “The Planning Board may require an independent third-party inspection and oversight of the construction of stormwater management facilities and erosion and sediment control and of annual maintenance operations, at its discretion. Such independent oversight may be especially important for implementing innovative techniques such as those involving pervious pavement and gravel wetlands. [ADDITION >>]The expense of this oversight shall be the full responsibility of the applicant.”
- Section 15.10 Waivers & Exceptions [see entire subsection]
- Definitions—Redevelopment (in terms of stormwater):
 - Mill Plaza version: “...Any creation of new impervious area over portions of the site that are currently pervious is required to comply fully with the requirements of this manual, with the exception of infill projects.”
 - “Standard” version: “...Any redevelopment activity that results in improvements with no increase in impervious area shall be considered redevelopment activity under this regulation if capital cost of improvements is greater than 30% of the appraised property value.”