

— REQUEST FOR PLANNING BOARD ACTION IN RESPONSE TO AUGUST 25TH MEETING—

August 30, 2021

Planning Board
Todd Selig, Town Administrator
Rick Taintor, Community Planning Consultant
8 Newmarket Road
Durham, NH 03824

Dear Members of the Board, Rick, and Todd—

The August 25th Planning Board meeting, dedicated to Colonial Durham Associates' Mill Plaza application, was disappointing for reasons that far exceed my dismay at the outcome. Procedures were ignored (e.g., for a public hearing, granting waivers) and the public was disrespected (to put it mildly). What's worse, the Board abdicated its responsibility to both the community and the applicant to drill down on factors that could have a significant impact on whether, when, and how the applicant proceeds with the next step, i.e., developing full engineering plans.

One of the most egregious violations of the Board's responsibilities centers on the applicant's intent to target a college student-age tenant demographic and the Chair's assertion that the Board may not address the likely consequent impacts. In other words: The Board threw the Conditional Use Permit criteria for Buildings B and C's "mixed-use with residential" zoning out the window.

I believe the Chair's assertion is wrong and, in fact, without foundation—and I was stunned that no one sitting at the table asked for an opinion from the Town's attorney.

As the NH Legal Assistance Fair Housing Project website notes, Federal and NH State (via RSA 354-A) address housing discrimination not at the point of reviewing plans to build apartments that will be marketed to a specific demographic, but rather at the intersections of landlords and tenants (emphasis added):

“Under the federal Fair Housing Act and the New Hampshire Law Against Discrimination, it is illegal to discriminate in the **rental, sale, or financing** of housing based on someone's race, color, national origin, religion, sex, familial status, disability, age, sexual orientation, marital status, or gender identity.”

Fair Housing laws cover “protected classes,” as listed above. “College student” is not one.

What about “age” or “familial status”?

The Fair Housing Act, per the U.S. Department of Housing and Urban Development's website, defines “familial status” as “families with children under the age of 18; pregnant women and people in the process of obtaining custody of children under 18, or persons with written permission of the parent or legal guardian).”

The HUD website also states: “However, it contains a limited exemption from the familial status prohibitions for housing for older persons.” These are the “The Housing for Older Persons exemptions,” which leads us to zoning for “55+” or “62+” options for developments.

Giving Colonial Durham Associates an informal green light means that the applicant left the room under the impression that the Board looks favorably upon the application and that any remaining hurdles will be overcome prior to approval. CDA is therefore likely to waste time and resources on a plan that still needs to be modified in the many ways that the Planning Board is empowered—specifically authorized by both the State and the community—to require.

The Board sent that “good-to-go” message not only prematurely but without substantive foundation.

I suggest that, at a minimum, the following—or similar—remediating steps be taken at the earliest possible opportunity:

- 1) Todd and/or Town Attorney Laura Spector-Morgan address the Board to (a) correct the misapprehension engendered by Chair Rasmussen’s comments, and (b) to confirm that the Board **must apply all land use regulations**—including Conditional Use Permit criteria but subject to the exception laid out by Ms. Spector-Morgan related to residential density, per the 2015 Settlement Agreement.
- 2) The Planning Board schedule a special meeting to which Colonial Durham is invited. While the Board may establish “ground rules” for such a meeting, it would seem appropriate that neither the applicant nor the public should anticipate speaking. On the other hand, the Board should allow time for an attorney representing residents—who have spent considerable effort to weigh in about Conditional Use criteria as they directly relate to the project and its potential impact on their quality of life—to speak.
- 3) At that meeting, the Board thoroughly evaluate and vote on the four Conditional Use Permit applications—as suggested by Lorne Parnell at the August 25th meeting.
- 4) Only then should the Board advise the applicant whether to take the next step.

I look forward to your taking up this matter at the September 8th meeting, if not before.

Regards,

Robin